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ABSTRACT

The three chapters in Unit 2 of a six-unit series on Indiana state history designed to be taught in Indiana secondary schools chronicle the need for rewriting the Constitution of 1816, the events of the Constitutional Convention of 1850-51, and the details of the new constitution. Chapter 1 explains the reasons that Hoosiers wanted a new constitution. After a rapid population increase in Indiana, the Constitution of 1816 ceased to meet the needs of the new state, and many Hoosiers felt that the government created by the 1816 Constitution was not democratic enough. Chapter 2 details the events of the Constitutional Convention of 1850-51. The delegates met in Indianapolis to write the new constitution, which was based largely on the previous constitution and the U.S. Bill of Rights. The new constitution made the state government more democratic by extending the franchise to all white males. Chapter 3 analyzes features of the Constitution of 1851. The government under the new constitution is studied including a look at how the General Assembly makes laws, provisions for the executive branch, and changes in the judicial branch of government. (SM)

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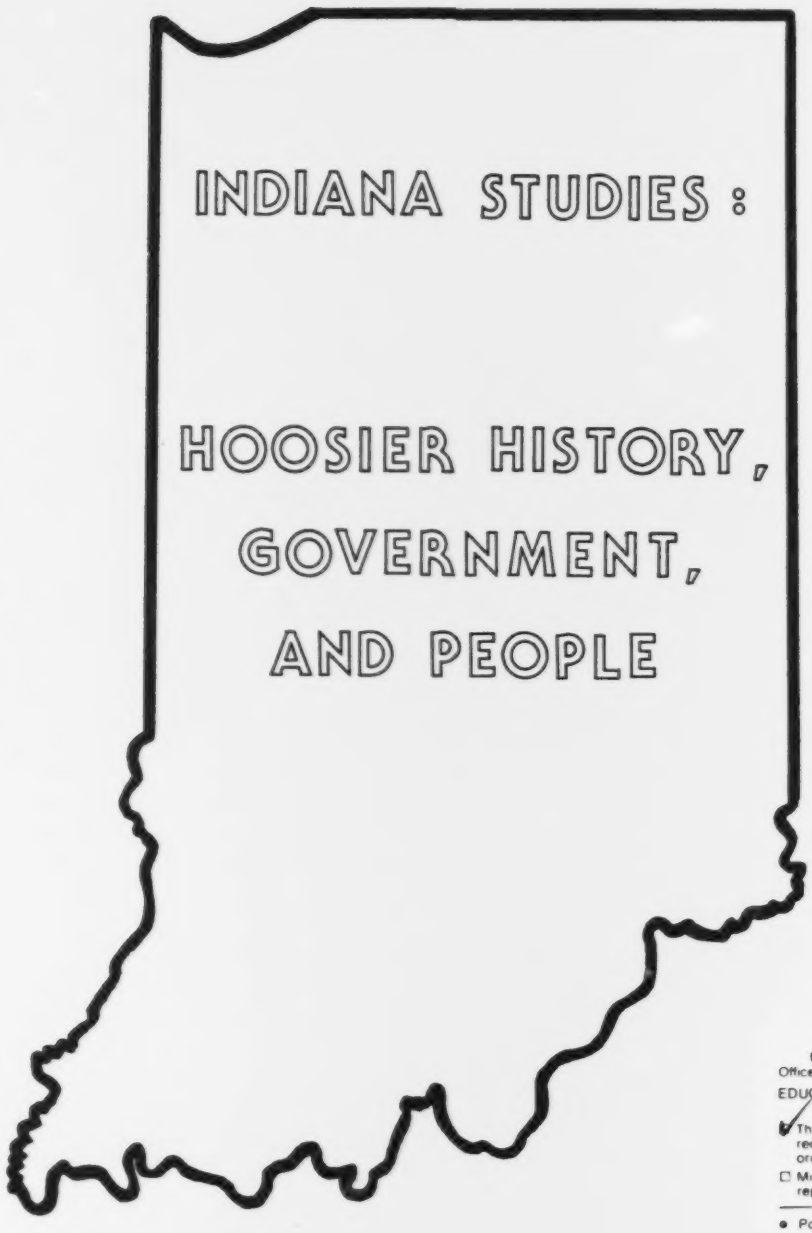
INDIANA STUDIES:

HOOSIER HISTORY, GOVERNMENT, AND PEOPLE



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UNIT II - Constitutional Crisis and Change

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INDIANA STUDIES: HOOSIER HISTORY, GOVERNMENT, AND PEOPLE

UNIT II
CONSTITUTIONAL CRISIS AND CHANGE

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UNIT II - CONSTITUTIONAL CRISIS AND CHANGE

TIME LINE

1816	Adoption of Indiana's First Constitution.
1820-1850	Several Attempts to Call for a Constitutional Convention.
Aug. 6, 1850	Election of Constitutional Convention Delegates.
Oct. 7, 1850	First Meeting of the Constitutional Convention in Indianapolis.
Feb. 10, 1851	Conclusion of the Constitutional Convention.
Aug. 4, 1851	Voters of Indiana Approved New Constitution.
Nov. 1, 1851	New Constitution Went Into Effect.
Mar. 14, 1881	Article XIII Dealing with Negro Exclusion Removed from Constitution by Vote of 126,221 For to 36,345 Against.
Mar. 24, 1881	Governor Albert Porter Proclaimed New Article XIII in Force Replacing Negro Exclusion Article.

Unit II - THE NEED FOR A NEW CONSTITUTION

INTRODUCTION

- What went wrong with the 1816 Constitution?
- How did the 1850-1 Constitutional Convention try to solve Indiana's problems?
- What were the main features of the new Constitution?

Have you ever started to fix your bicycle only to find that it needed more than just a few minor repairs? Sure, you could fix the flat tire, adjust the brakes, and tighten some spokes. But what if the longer you worked, the more serious problems arose? A wheel got bent, brake cables snapped, the derailler gears just wouldn't work right any more. Wouldn't you really start wishing you had a new bike, and not a pile of parts scattered all over the driveway?

Something like your bike repair problem faced Indiana lawmakers soon after they adopted our state's first Constitution in 1816. Unfortunately, it was very difficult to repair the Constitution. It couldn't be done by a simple amendment process. Instead, the majority of voters would have to approve the calling of a Constitutional Convention in order to make any changes, no matter how small. And according to some lawmakers, the people could only vote in such an election every twelve years. That means the only times voters could have called for a Convention was in 1828, 1840, or 1852.

But Indiana's governmental problems became so serious that the voters finally approved the calling of a Constitutional Convention in 1850. Why a new Constitution was

necessary and how it was written is the story of this unit. We will also see how the 1851 Constitution itself needed changes. Finally, we will learn how you will probably be expected to vote on changes in the Indiana Constitution in just a few years.

Unit II
Chapter 1 - THE REASONS WHY THE 1816 CONSTITUTION FAILED
Section 1 - How Difficult Was Changing Indiana's First Constitution?

Indiana's first Constitution was short, to the point, and suited to the needs of a frontier state. Forty-three delegates from 13 counties met in Corydon in June of 1816. Within 2 weeks they confidently wrote a Constitution which they expected most Indiana citizens to readily accept. The first Constitution made no provision for approval (ratification) by the voters. Instead the Constitution went into effect on the last day the Convention met. Imagine that! You are elected by your neighbors to draw up a fundamental law like a Constitution, and whatever is accepted by the Convention does in fact become the permanent basis of government from that point onward. Your neighbors have to accept what you and the other Convention delegates decided.

Why did it happen that way in Indiana? Most Hoosiers were more excited about statehood than about their future state government. Our 1816 Constitution strongly resembled the Ohio Constitution of 1802 and the Kentucky Constitution of 1799, and those constitutions seemed to be working fine. There was no early criticism of our first Constitution in any of the newspapers.

If the voters didn't like the way the Constitution worked, they simply waited twelve years to make changes. According to Article VIII, "every twelfth year after this constitution shall have taken effect...the qualified Electors

[voters] shall express, by vote, whether they are in favour of calling a convention, or not." If the majority of voters wanted to call a Convention, the Governor would have to proclaim this fact to the General Assembly. The General Assembly, in turn, would have to pass a law in both houses calling for such a Convention. This Convention would have the power to revise, amend, or change the 1816 Constitution.

Some Indiana voters were not content to wait twelve years, or until 1828, 1840, 1852, etc., to change a Constitution which wasn't working out as well as promised. As early as 1823, just seven years after adoption of the Constitution, the voters went to the polls to determine whether a new Convention should be called.

Vote on Calling a Constitutional Convention

	FOR	OPPOSED
1823	2,987	13,831
1828	10,092	18,633
1840	12,277	61,721
1846	32,468	27,123
1849	81,500	57,418

After considering the above chart, answer the following true-false questions:

1. Very early in Indiana's state history, the voters overwhelmingly wanted a new Constitution.

2. Gradually, Indiana voters began to vote in favor of Constitutional change.
3. Only in the last election listed (1849) did more people vote for Constitutional change than against it.

Look back at the chart showing the vote on a Constitutional Convention. It appears that the voters did approve of such a Convention in 1846, but no Convention met. In fact, the voters had to make themselves perfectly clear again in 1849 that they really did want a Convention. What went wrong in 1846? Didn't the majority rule in Indiana elections? After all, there were 5,000 more voters who wanted a Convention than those who did not want one. Why was there no Convention following the 1846 election? This is what happened to the 1846 election calling for a Constitutional Convention:

1. Governor James Whitcomb (Democrat) stated that the total number of voters for and against the Convention amounted to only 59,000 votes, which is less than one-half the number of the 126,969 eligible voters who attended the polls and voted upon other questions.
2. The General Assembly doubted that enough Indiana voters really wanted a Convention called, because so few voted on that question (59,000 out of 126,969 eligible).

Vote on Calling a Constitutional Convention
Indiana General Assembly: House - June 6, 1847.

	Whigs	Democrats	Total
In favor of calling a convention	4	31	35
Against calling a convention	48	13	61

3. In addition, some argued that elections calling for a Constitutional Convention could only occur every 12 years. The year 1846 was not a year when a Constitutional Convention could be called.

The pressure was now growing for a major change in Indiana's Constitution. Enough other things were going wrong in Indiana's government that the voters made themselves quite clear in 1849. Out of 138,918 total votes, there were 81,500 votes for and 57,418 against a Constitutional Convention.

The total votes for Governor in 1849 amounted to 147,250. Is 81,500 votes for the Convention more than one-half the total votes for Governor?

Governor Dunning recommended that a special election be held to select Constitutional Convention delegates. That election was held August, 1850.

Unit II
Chapter 1
Section 2 - Complaints About Indiana Government Under the 1816 Constitution

We have already seen how long it took for the voters to make any changes in the 1816 Constitution. It was 33 years from the time the First Constitution went into effect until the time when the Second Constitutional Convention met in Indianapolis. It certainly didn't take that long for our Founding Fathers to replace the Articles of Confederation with the United States Constitution.

Now let's see what the main complaints were about Indiana's First Constitution. Of course, most of the complaints were not about the Constitution itself, but about the kind of government it had created. What was wrong with the government?

1. It was not democratic enough. The people only voted for the Governor, Lieutenant Governor, and their state legislators. They did not vote for Auditor, Treasurer or the Secretary of State.
2. The General Assembly had too much power to select officials.
3. The General Assembly met too often and for too long in each session. Many people complained that this was too expensive.
4. The General Assembly interfered too often in local matters and passed too much special legislation.

5. The General Assembly had spent so much money that it was impossible to ever get out of debt.

Assume that you are a delegate to the 1850-51 Constitutional Convention. You are trying to answer all of the objections that Indiana citizens have about their 1816 Constitution. How would you vote on each of the following proposals?

YES	NO	
___	___	1. People will vote for Governor and Lieutenant Governor, but not for other elected officials.
___	___	2. The General Assembly will elect State Treasurer, Auditor, and Secretary of State.
___	___	3. Citizens will vote for Governor, Lieutenant Governor, state legislators, State Treasurer, Auditor, and Secretary of State.
___	___	4. Judges will be appointed by the Governor.
___	___	5. There will be biennial (every 2 years) sessions of the General Assembly.
___	___	6. Persons convicted of a crime may appeal their case to the General Assembly.
___	___	7. Divorce will not be granted by the state legislature, but rather by local judges.
___	___	8. All organizations, such as literary societies or debating clubs, must obtain charters from the state legislature.
___	___	9. The state legislature may not loan money to any railroad, turnpike, or canal company.

If you voted "yes" on Nos. 3, 5, 7, and 9, you would be voting for a Constitution that gave more power directly to the people (more democratic), eliminated local and special legislation, limited the power of the General Assembly, and prevented the state legislature from getting the state into debt. This

is exactly what the majority of the delegates at the Constitutional Convention did. In the next chapter, we'll learn a little about the delegates and examine the new Constitution--the same one that forms the basis for our state government today.

Questions

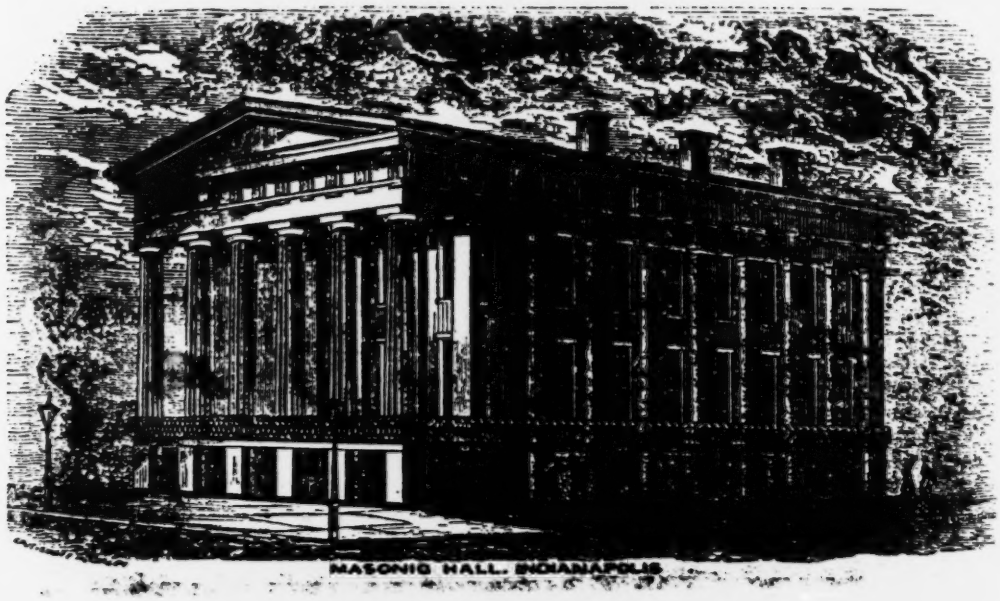
1. What changes could have been made to reduce the power of the General Assembly? Identify one change in each complaint.
2. Why were Indiana voters anxious to elect their own state officials? How is direct election of state officials and judges more democratic than having the General Assembly elect them?
3. How could the General Assembly have shortened its workload by eliminating local or special legislation?
4. Can you think of ways that local or special legislation might be abused by legislators?

Unit II
Chapter 1
Section 3 - The Delegates

- Who were the delegates elected to serve in the Constitutional Convention?
- What were their political and economic backgrounds?
- What kind of a Constitution might they be expected to write?

There was agreement among Indiana voters that the 1816 Constitution needed to be changed or even scrapped for a new one. Therefore, the eligible voters chose 150 delegates from various parts of the state to meet in Indianapolis "to revise, amend, or alter the constitution." Fifty of the delegates were to be senatorial and 100 were to be representative delegates. (This number of 150 is comparable to the current Indiana General Assembly, which is made up of 50 senators and 100 representatives.)

The delegates were all white males, since these were the only people who could vote or hold office. These 150 men were to meet in the Representative's Hall in the State Capitol or in the Masonic Hall, whichever was more suitable and available. The General Assembly appropriated (set aside) the amount of $40,000 for the Convention's expenses.



The Constitutional Convention of 1851 met in Masonic Hall from Dec. 26, 1850 to Feb. 10, 1851. The General Assembly originally offered to rent the hall for $100 a month, but the owners wanted $20 a day. Therefore, the Convention met in the Representative Hall of the State Capitol until the General Assembly went back into session; then the Convention delegates moved to the Masonic Hall.

Who were these 150 men and what could be expected of them in writing a Constitution? We are going to examine as much of their backgrounds as we can to make some guesses about the kind of Constitution they would be likely to write.

First, we know that 95 were Democrats and 55 were Whigs (National Republicans). Given this information, what can you predict about the kind of document we are likely to see after this Convention is over? Which party do you think will be more pleased with the new Constitution? Should a process as important as writing a Constitution be divided along party lines? Why or why not?

It is a fact that whenever a club, group, or legislature meets, people are often divided on certain questions. Why else would one ever bother to take votes? If you really take a close look at our U.S. Constitutional Convention, you will see that there, too, differences arose among special interest groups. They were not yet known as political parties. In every free society, differences of opinion will arise. Political parties are designed to make a particular point of view win out over another.

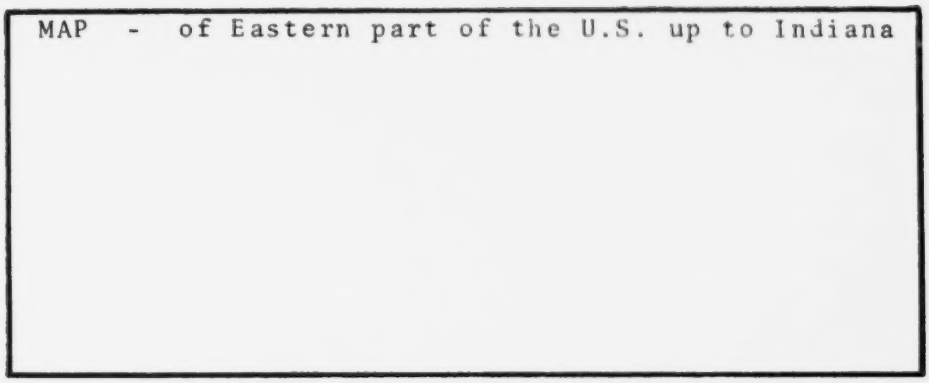
Besides the political party division, there were other important differences between the delegates. For example, this was supposed to be an Indiana Constitution written by the people of Indiana. But where did all these Hoosiers come from before they lived in Indiana? Would their home state backgrounds have any influence on the kind of Constitution they wanted?

Here is some information about the home-state background of the delegates. What guesses could you make about how this might affect our Indiana Constitution?

Home State of Convention Delegates

Kentucky	22	Maryland	7	Ohio	17
Virginia	19	Delaware	1	Indiana	13
North Carolina	10	Pennsylvania	19		
Tennessee	7	New York	16	Massachusetts	4
South Carolina	4	New Jersey	1	Connecticut	2
				Vermont	1
		Ireland	3	New Hampshire	1
		Scotland	3		

What % of the 150 total delegates were native-born Hoosiers? From what part of the United States did most of Indiana's Constitutional delegates come? South? Middle Atlantic? North Central?



So far we have learned that most delegates to the Indiana Constitutional Convention were Democrats and most were not native-born Hoosiers. We will see later how those two facts may help to explain some important parts of Indiana's Constitution.

Still another way of looking at the delegates is to examine their economic backgrounds. Is it true that the delegates closely resembled "the People of the State of Indiana" as the Preamble claims? We have already learned that only white males could be at the Convention as delegates--and that certainly was true also in neighboring states.

According to Professors John D. Barnhart and Donald F. Carmony in their booklet, Indiana's Century Old Constitution (1951), the delegates can be divided this way according to occupation:

62 farmers 39 lawyers 16 physicians 11 merchants and tailors 2 manufacturers 2 surveyers 2 teachers	1 of each of the following: tanner carpenter millwright bricklayer county reader accountant miller editor banker

- Study the list of occupations. Which groups would be the most influential at the Convention?

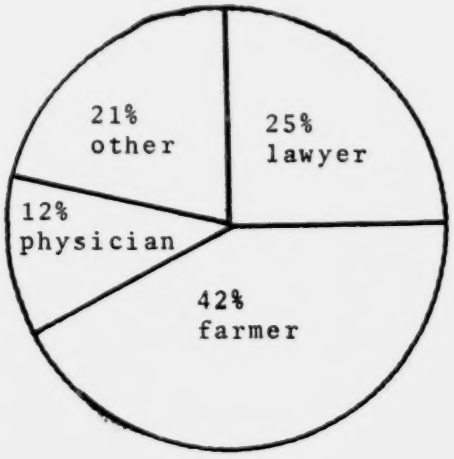
- What kind of Constitution would those groups be likely to favor?

- In what ways would it be fair to say that this group of delegates represented the people of Indiana in 1850?

- What group of people were excluded in 1850? What effect do you think their exclusion would have on the kind of Constitution to be written?

- What else should we know about these delegates before trying to make a judgment about the kind of Constitution they would want written?

Another way of looking at the make-up of the Convention is to examine the percentage of each group present.



So far we have seen where those 150 men came from, what political parties they represented, and their occupations.

Comparison to the Modern Legislature

Problem: Assume that there is to be a new Constitutional Convention of 150 delegates meeting in Indianapolis today. In what ways would today's Constitutional Convention be similar or different from the 1851 meeting?

Comparing 1851 Convention to Hypothetical (Modern) Convention

	1851	Today
Sex Ratio	100% male	___men ___women
Racial Group	100% white	___white ___black ___other
Occupation	42% farmers 25% lawyers 12% physicians 21% other	___farmers ___lawyers (attorneys) ___teachers ___businessmen ___realtors ___other
Political Party	95 Dem. 55 Whip	___Dem. ___Rep.

One way to check your prediction about the make-up of the hypothetical Constitutional Convention would be to check the backgrounds of the current membership of the General Assembly. The Indiana State Chamber of Commerce publishes a small Legislative Directory each year which contains a brief biography of

each of our 150 legislators. You can easily identify men, women, racial groups, and the short biographies should include a brief identification of each legislator's occupation. The 1979-80 Indiana General Assembly had more attorneys than any other group, followed by businessmen, teachers and farmers.

	Senate (50)	House (100)
attorneys	11	23
businessmen	10	10
farmers	5	11
teachers	6	9
realtor	2	8
factory worker	-	4
insurance	5	2
industrialist	-	5
police work	-	3
gov't. services	-	3
homemaker	-	3
	One of each of the following:	One of each of the following:
	former assistant to governor	credit union officer
	builder	freight conductor
	worker	occupation consultant
	housewife	public relations director
	administrative assistant to county council	account executive
	banker	physician
	auctioneer	airplane pilot
	public relations director	banker
	unspecified	builder
		funeral director
		unspecified
		Two of each of the following:
		pharmacists
		salesmen
		purchasing agents
		retired businessmen

Compare the occupation chart of the 1979-80 General Assembly with that of the Constitutional Convention of 1851.

Q. What changes in the make-up of the General Assembly do you notice?

Q. What groups have increased their representation? Which ones have lost representation?

Q. Is the make-up of the General Assembly more representative of the people of Indiana today than the Constitutional Convention of 1851 was?

Make-up of the 1979-80 General Assembly

	SENATE (50)		HOUSE (100)	
	Black	White	Black	White
Men	0	47	4	88
Women	2	1	1	7

Even though the legislature is dominated by the white men, what changes do you see for minority representation in the Indiana General Assembly? Can you make any guesses as to what made these changes possible? Perhaps it was women's suffrage, re-appointment, black suffrage.

In conclusion, we can see that the 1851 Constitutional Convention represented a far more rural, male-dominated society. We would expect to see additional changes in the racial make-up and sex ratio in modern legislatures. Those changes will only occur if members of minority groups and women take an active part in politics. What do you think you can do about that in the near future? Is your area a good one for a member of a minority or a woman to run for office and win? If not, how can a minority member make his/her greatest influence on the majority?

Unit II
Chapter 1
Section 4 - Personalities in the 1850-51 Constitutional Convention

It may be interesting to compare the number of farmers, attorneys, teachers, businessmen, and other who have made up past Conventions of the legislatures, but let's not forget that each of those persons was an individual. He or she may or may not think like the typical farmer, attorney, teacher, or businessman. Just as each of you in the classroom are individuals and would probably like to be treated differently from others, so too were the delegates individuals. Just as in your classroom, some delegates were real characters and talked constantly. Others were influential behind the scenes. Some said very little during the entire Convention.

What were these delegates like as people, and not just as members of political parties or occupational groups?

picture: The Indianapolis Locomotive

One "observer" of the Convention was a Timothy Tugmutton. Timothy Tugmutton? Do you think that was a real name, or do you think the writer chose that name to protect himself from angry readers? Read some of the following descriptions to answer those questions.

Saturday, Feb. 1, 1851
Sketch of the Convention by Timothy Tugmutton

Going to the Hall

"Let us go down to the Masonic Hall and take one look at these 'potent, grave, and reverend seignors (statesmen). As it approaches 9 o'clock (morning) we see the members singly and in squads of from three to a dozen, going too--some talking very confidentially, with their heads so close together that their cigars knock the ashes off each other, others talking quite loud, especially if they think they are saying anything smart, and one tall young man, with a long cloak, red face, wide mouth and prominent eyes, who seems to have been taking a blow at the "mellow horn," is damning somebody's amendment to something in a very complicated specimen of profanity, to the manifest (obvious) delight of some other gentlemen fitted up with whiskers and cigars, who accompany him, and to the great discomposure (discomfort) of an old gentlemen with a blue eye, blue blanket, overcoat, and white cravat (necktie), evidently a preacher, a few steps behind them."

Q. How does Tugmutton express criticism of delegates?
Q. Are any of those criticisms really serious?

In the Hall

"You see that short, fat man walking up the aisle towards us, with spectacles, a cane in the hand, and his hair frizzled up all around a bald place on the top of his head, that looks like a miniature prairie, surrounded by bushes, with a slight limp in one leg, and a strong squint in one eye, dressed in black, and a very keen, sagacious (wise) looking man at a close view, that is John Pettit, (Tippecanoe County)...an earnest, energetic speaker."

Pettit walks down the aisle nodding "to a man sitting next to the aisle, with a light blue overcoat on, and dark blue breaches, his hair sprinkled with gray and gray whiskers, his chin retreating as though it were afraid of the thick lips that protrude above it. His hair is combed very smoothly down in front, and badly tangled up behind. But over all this rough casting, there is a mild, benevolent (kindly) expression, that half redeems the plainness of the features on which it rests, and Nature, to compensate (make up for) for her carelessness in carving his face, has given him an intellect with a regiment of pretty faces, that is Robert Dale Owen, by all odds, the ugliest man in the Convention. In speaking, Mr. Owen is constantly in motion, turning to all parts of the house, and jumping about in a manner very 'incompatible' with the maintenance of any great dignity, strongly reminding one of a jay bird."

Q. What was Tugmutton's opinion of John Pettit? of Robert Dale Owen?

Q. What seemed to be the abilities Tugmutton admired in Pettit and Owen?

Q. What do you think Tugmutton thought of the following delegates?

Mr. Colfax (South Bend) - "that pale stoop-shouldered young man, with very little beard...He leans his hands on the desk and cranes forward, as fox hunters call it, with his neck, makes no gestures, speaks rapidly and to the point."

Mr. Cole (Nobleville) - "That small man, with a large head, and a red end to his nose, like he had a perpetual bad cold, his face mild and placid (calm)...an excellent man of clear, good sense, and sound judgment, remarkable for not having made a single speech in the convention, a rather unaccountable eccentricity (unusual characteristic) that if imitated by about one hundred and forty other members, would increase the popularity and efficiency of that body materially."

Q. What kind of speech-making did Tugmutton admire? Prove this by making reference to his description of both Colfax and Cole.

Q. Are people who never say anything in a public meeting really "of clear, good sense and sound judgment" or not?

Q. What would have been accomplished at the Convention of 1851 if everyone were like delegate Cole? delegate Owen? delegate Colfax?

Perhaps after considering Tugmutton's description we can better appreciate the different kinds of people around us. Obviously, if everyone were like Cole nothing would get done

but it would be nice and quite. A convention full of Robert Dale Owens would be like a squawking birdhouse at the zoo. And a dozen Colfaxes speaking rapidly and to the point would wear down almost everyone else.

In the next chapter we will see the delegates get down to serious business, but in closing this section it would be best to remember that these 150 delegates were, first and foremost, human beings. They sometimes were mischievous and often got irritated with each other. Tugmutton describes the Masonic Hall as full of tables "like school boys' desks... where the members write if they happen to be industrious--roll up paper wads to throw at other members if they feel funny, or discharge themselves (make speeches) if they feel eloquent."

Activity

Attend a public meeting in your community such as the City Council, School Board, or Town Meeting. Plan to spend about one hour observing the officers and then write down your observations of the public meeting.

As you describe the physical characteristics of the officeholders and listen to what they say during the meeting, try to answer some of these questions.

- Just how important, really, is personal appearance after the first impression has been made?
- Which members seem to take their job seriously? too seriously?
- Which members seem to contribute most to getting something accomplished?

Caution: It may well be that all the members are serious, or that occasional uses of humor are necessary. Don't assume just because Tugmutton made criticisms of the Convention delegates that you need to be as critical.

You should have realized by now that "Timothy Tugmutton" was a pen-name for an observer of the Convention. Of what value are accounts such as Tugmutton's about a public meeting like the Constitutional Convention? Of what value is your own account of a public meeting?

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Unit II
Chapter 2 - THE CONVENTION DELEGATES MEET
Section 1 - Writing a New Constitution

As you gazed over the driveway and saw the scattered parts of your broken-down bicycle, you may have had some final thoughts about putting it back together to make it usable again. Or, you might finally admit, "This problem has gotten out of hand. I really need a new bike."

Most delegates to the Constitutional Convention also decided that the old Constitution was hopeless and that they should start all over again with a new Constitution. Delegate Kilgore did try to get a motion passed which stated that the people of Indiana were satisfied with the 1816 Constitution, but his motion lost by a vote of 126-11! Thus, the delegates began their four-month-long job of writing a new Constitution.

A new constitution doesn't have to be completely brand new. After all, if you wanted a new bicycle to replace your pile of parts you wouldn't have to "re-invent the wheel." So the delegates looked at the old 1816 Constitution and kept some of its ideas. They also studied the results of the 1848 constitutional conventions held in New York, Ohio, Illinois, and Wisconsin.

ad from Indiana Journal

Many delegates were familiar with the U.S. Constitution of 1787 and especially with the first ten Amendments, known as the Bill of Rights. A few delegates presented petitions or lists of suggestions from ordinary citizens, including women and free blacks.

Some of the delegates knew Roman and English history and ideas from those governments were used. Others were aware of "current events" and wanted to create a Constitution that would provide freedom and liberty for all Indiana citizens. This doesn't mean that some delegates were not narrow and prejudiced by our standards, or by the standards of their times.

Thus, there were many influences on the writing of the 1851 Constitution. Between October, 1850 and February, 1851 the Convention voted on 333 different resolutions before Indiana's Constitution finally appeared. August 4, 1851 was chosen as the date the new Constitution would either be approved or rejected by Hoosier voters. Let's compare parts of the 1816 Constitution with the 1851 Constitution and Indiana's Bill of Rights with the U.S. Bill of Rights.

Comparison of the 1816 Indiana Constitution with the 1851 Indiana Constitution

Look at the two passages below. Which emphasizes property more? Which is more similar to the U.S. Declaration of Independence? Notice which words are capitalized in each passage. Does that tell you what the writers of each document thought was most important?

1816 Indiana Constitution	1851 Indiana Constitution
Article I...."WE declare, That all men are born equally free and independent, and have certain natural, inherent, and unalienable rights; among which are the enjoying and defending life and liberty, and of acquiring, possessing and protecting property, and pursuing and obtaining happiness and safety...."	Article I, Section 1...."We DECLARE, That all men are created equal; that they are endowed by their CREATOR with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness...."

- Which passage seems to reflect the immediate dangers of frontier life more?
- Which passage indicates more willingness to use the language from a national document? Can you make any guesses why Indiana was becoming more willing to accept such language in its Constitution?

One more comparison will show that, while there were some similarities between the two Indiana Constitutions, the delegates believed that the more general language of earlier times needed to be revised. As you examine this next set of comparisons, try to answer the following questions:

- Why was the 1851 passage dealing with freedom of religions so much longer?
- Even though one is longer than the other, are there <u>major</u> differences between the two?

1816 Indiana Constitution	1851 Indiana Constitution
<u>Article I, Section 3</u> "That all men have a natural and indefeasible undeniable right to worship Almighty God, according to the dictates of their own consciences; That no man shall be compelled to attend, erect, or support any place	<u>Article I, Section 2</u> "All men shall be secured in the natural right to worship <u>Almighty God</u>, according to the dictates of their own consciences. <u>Section 3</u> No law shall in any case

of Worship, or to maintain any ministry against his consent; That no human authority can, in any case whatsoever, control or interfere with the rights of conscience; And that no preference shall ever be given by law to any religious societies, or modes of worship; and no religious test shall be required as a qualification to any office of trust or profit."

whatever control the free exercise and enjoyment of religious opinions, or interfere with the rights of conscience.

Section 4
No preference shall be given by law, to any creed, religious society or mode of worship; and no man shall be compelled to attend, erect, or support any place of worship, or to maintain any ministry, against his consent.

Section 5
No religious test shall be required, as a qualification for any office of trust or profit.

Section 6
No money shall be drawn from the treasury, for the benefit of any religious or theological institution.

Section 7
No person shall be rendered incompetent, as a witness, in consequence of his opinions on matters of religion."

What parts of the 1851 Constitution are identical in language to the 1816 Constitution?

What parts of the 1851 Constitution are entirely new?

How does Article I, Section 6 clearly show the separation between private religious institutions and public treasury funds? Can you guess what must have been the experience of Indiana government before the writing of the Constitution of 1851 as far as giving money to private religious institutions is concerned?

Read Article I, Section 7 again. Could a Quaker or a Roman Catholic testify in court against any other person after the 1851 Constitution was adopted?

From this brief comparison between the 1816 and 1851 Constitutions, you should see that the writers were not "re-inventing the wheel." They borrowed what had worked before, but also knew from practical experience that new sections needed to be added.

Comparison of the Indiana Constitution (1851) with the U.S. Bill of Rights (1791)

When two Wabash College professors, Philip S. Wilder, Jr. and Karl O'Lessker, wrote Introduction to Indiana Government and Politics in 1967, they made the following observation about the 1851 Constitution:

> Although Indiana's Bill of Rights is designed to do for the state very much the same thing the first ten amendments to the Federal Constitution do for the national government, the fact is that Indiana's list of protections is significantly broader than the Federal list.

Visually compare the U.S. Bill of Rights (first ten amendments) with the Indiana Bill of Rights (Article I). Which is longer? Les us see first how sections of the Indiana Bill of Rights are similar to the U.S. Bill of Rights.

	Indiana Bill of Rights (1851)	U.S. Bill of Rights (1791)
A.	Article I, Section 13	Amendment VI
	"In all criminal prosecutions, the accused shall have the right to a public trial, by an impartial jury, in the county in which the offense shall have been committed; to be heard by himself and counsel; to demand the nature and the cause of	"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to

	the accusation against him, and to have a copy thereof; to meet the witness face to face, and to have compulsory process for obtaining witnesses in his favor."	be informed of the nature and the cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense."
B.	Article I, Section 16	Amendment VIII
	"Excessive bail shall not be required. Excessive fines shall not be imposed. Cruel and unusual punishments shall not be inflicted. All penalties shall be proportioned to the nature of the offense."	"Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."
C.	Article I, Section 20	Amendment VII
	"In all civil cases, the right of trial by jury shall remain inviolate."	"In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved..."
D.	Article I, Section 21	Amendment V
	"No man's particular services shall be demanded, without just compensation. No man's property shall be taken by law, without just compensation; nor, except in case of the State, without just compensation first assessed and tendered."	"No person...(shall be) deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."
E.	Article I, Section 31	Amendment I
	"No law shall restrain any of the inhabitants of the State from assembling together in a peaceable manner, to consult for their common good; nor from instructing their representatives; nor from	"Congress shall make no law...abridging...the right of the people peaceably to assemble, and to petition the government for redress of grievances..."

applying to the General Assembly for redress of grievances."

F. Article I, Section 32

"The people shall have the right to bear arms, for the defense of themselves and the State."

Amendment II

"A well-regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed."

G. Article I, Section 34

"No soldier shall, in time of peace, be quartered in any house, without the consent of the owner; nor, in time of war, but in a manner prescribed by law."

Amendment III

"No soldier shall, in time of peace, be quartered in any house, without the consent of the owner; nor in time of war but in a manner to be prescribed by law."

After everyone has shared their comparisons, you will probably agree with Professors Wilder and O'Lessker that the Indiana Bill of Rights does very much the same thing for our state that the U.S. Bill of Rights does for the national government. But the professors also claimed that "Indiana's list of protections is significantly broader than the Federal list." What do they mean by "broader"? It could mean that the Indiana Bill goes into more detail, covers more subjects, and protects citizens from their government to a greater extent.

On a separate piece of notebook paper, make a chart with three separate headings. Copy Article and Section numbers, but not the entire Article. Use "A" below as an example of how to write your comparison.

	Indiana Bill of Rights (1851)	U.S. Bill of Rights (1791)	Ways Indiana Bill of Rights broader
A.	Article I, Sections 2,3,4,6, & 7. (See page 00 of this section.)	Amendment I "Congress shall make no law respecting an establishment of religion prohibiting the free exercise thereof."	more specific, longer, against an established church, no more money to religious or theological institutions, etc.
B.	Article I, Sections 9,10 "No law shall be passed, restraining the free interchange of thought and opinion, or restricting the right to speak, write, or print, freely, on any subject whatever; but for the abuse of that right, every person shall be responsible."	Amendment I "Congress shall make no law... abridging the freedom of speech, or of the press..."	
C.	Article I, Section 31 (See page 00 of this section)	Amendment I "Congress shall make no law... abridging...the right of the people peaceably to assembly, and to petition the government for redress of grievances."	
D.	Article I, Section 18 "The penal code shall be founded	any part of the Bill of Rights (Amendments 1-10 of the U.S. Constitution)	

	Indiana Bill of Rights (1851)	U.S. Bill of Rights (1791)	Ways Indiana Bill of Rights broader
	on principles of reformation, and not of vindictive justice."		
E.	Article I, Section 36 "Emigration from the State shall not be prohibited."	any part of the Bill of Rights	
F.	Article I, Section 37 "There shall be neither slavery, nor involuntary servitude, within the State, otherwise than for the punishment of crimes, whereof the party shall have been duly convicted."	any part of the Bill of Rights	

From this exercise you should see that in every paired comparison the 1851 Indiana Bill of Rights goes into more detail, allows for more specific instances, and can be said to be broader than the U.S. Bill of Rights.

In summary, the Indiana Constitution writers of 1850-1 borrowed from both the 1816 Indiana Constitution and the 1791 U.S. Bill of Rights. The delegates also saw a need for improvements, and they responded to this by writing a longer, more specific, and broader document. Following the Civil

War, the U.S. Constitution was also considerably broadened. But in 1851, Indiana's new Constitution was one of the most progressive of its time.

Unit II
Chapter 2
Section 2 - How the Convention Worked to Write a New Constitution: Removing Special and Local Legislation

The delegates certainly borrowed ideas from the U.S. Constitution and from the newly-adopted constitutions of New York, Ohio, Illinois, and Wisconsin. They also presented their own views in resolutions, long speeches, heated debates, and in oral votes for or against parts of the proposed Constitution. In order to make sense out of all these resolutions, speeches, debates, and votes, the Convention followed this step-by-step approach:

1. All Convention delegates were divided into 22 separate committees, such as the Committee on the Rights and Privileges of the Inhabitants of this State, the Committee on County and Township Organization, and the Committee on Local and Special Legislation.
2. Each committee studied proposals related to its topic and prepared sections of the new Constitution which it reported back to the Convention.
3. The Convention delegates would debate and then either approve or disapprove the proposed section.
4. If approved, the section was sent to the Committee on Revision and Phraseology to be put in final written form. If not approved, it was sent back to the committee for review and revision.
5. All rewritten sections were voted on by the Convention

one last time.

6. The entire new Constitution was then sent to the Secretary of State, who ordered the printing of the proposed Constitution in the Indiana Journal, Indiana Sentinel, and the Statesman, three Indianapolis newspapers which had wide circulation.

Of course, printing the proposed Constitution did not mean that the electors (voters) of Indiana would automatically approve it. That step comes later.

Case Study

As an example of how the Convention worked, let's examine the work of one standing committee. Imagine that you are a delegate and have been assigned to the Committee on Local and Special Legislation. For this activity, you will need a pen and paper in addition to a copy of the Indiana Constitution. Please refer to Article IV, Sections 22 and 23, when instructed to do so by your teacher.

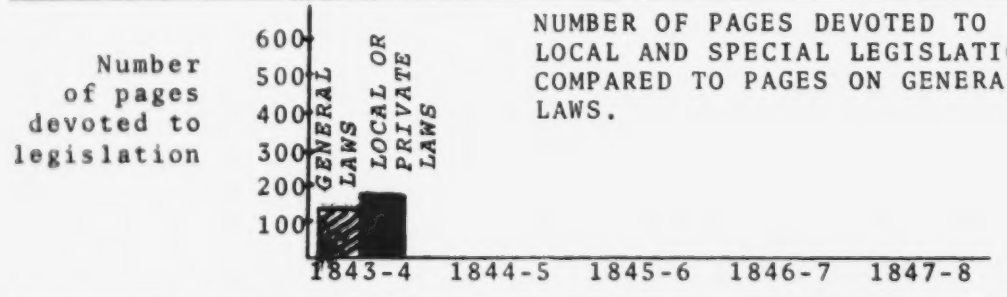
As a member of this committee, you feel that something must be done to reduce the length of time that the Legislature spends in session every year. When you were elected as a delegate, you told your neighbors that you believed that the Legislature was meddling too much in local affairs and giving special favors to some persons. Now you are in the position where you can do something about these lengthy and costly annual meetings of the Legislature. You have been asked by committee chairman Barfield to present a short oral

or written speech to the Convention suggesting ways of eliminating the evils of special and local legislation.

One piece of evidence you have, besides your own opinion, is Governor James Whitcomb's message of Dec. 6, 1848 on "The Evils of Local and Special Legislation." The message indicated that between the years 1843 and 1848, the Legislature spent more time on "local or private" legislation than it did on laws that affected all citizens throughout the state. Whitcomb argued that the number of pages of general laws from legislative sessions between 1843-1844 are (consecutively) 122, 92, 135, 164, and 125, while the number of pages devoted to local or private (special) concerns are 180, 301, 365, 431, and 636. Complete the following chart using this information that clearly shows the Legislature was spending more and more time on local and special matters.

Legislative Session	Pages of Local or Private Laws	Pages of General Laws
1843-4	180	122
1844-5		
1845-6		
1846-7		
1847-8		

Now, to make it even more apparent, convert the chart into a bar graph.



NUMBER OF PAGES DEVOTED TO LOCAL AND SPECIAL LEGISLATION COMPARED TO PAGES ON GENERAL LAWS.

Answer the following questions:

1. How could you use these charts in your speech?

2. What trends do you see in the consideration of local or special legislation as compared to general legislation?

3. What could you propose in order to change the time spent on special or local legislation?

Let us suppose Chairman Barfield isn't impressed with your nice, neat charts. Suppose he scowls during your factual presentation and decides to make his own speech. Listen carefully to what Chairman Barfield has to say and then plan your response.

Chairman Barfield: "Now, I've served a long time in the Indiana General Assembly under our old Constitution. And I've always prided myself that I listened to my people back home. I always did what I could for them, especially if they were friends of mine--if you know what I mean. I remember the time when Jim Hardin, one of my constituents, asked me to get a law passed so he could peddle and sell goods without having to get a license in every county of the whole state. I told Jim that I was sure I could help him--that's what I consider the job of a legislator to be--helping my people back home. But I wasn't so sure I could get a <u>special</u> law for him unless I made a deal with another legislator who wanted a special law of his own passed. Lucky for me, Representative Garrett came over and told me a real hard-luck story. It seems that he had a constituent named Silas Overman who had just lost a court decision ordering him to pay $258! Overman asked Representative Garrett if he could get

the Legislature to pass a law calling for a special election in Overman's local township. If Overman's side won the election, he wouldn't have to pay. Now what do you suppose Representative Garrett and I talked about? Sure, some people call trading of votes, like Garrett and I did, 'log-rolling.' But what's wrong with that? Weren't we just doing our jobs as representatives of the people? And why do you want to cut down on what we legislators do best?"

Barfield leans back in his chair, glares at you, smiles at the rest of the committee members, and waits for your reply. Luckily for you, Governor Whitcomb's message of Dec. 6, 1848 had another page to it. Can it help you against Barfield?

> "The bills and joint resolutions passed (in the 1847-8 session) numbered over 600, averaging more than four bills per legislator, and more than 13 for each working day for six or seven weeks. This immense number of bills lengthens the legislative session, increases the work of the legislators, ignores the rights of people who can't be there, and makes the laws too complicated and uncertain. Too much special and local legislation distracts the attention of the legislators and may even cause them to pass dangerous general laws because they are tired of all these special and local deals.
>
> The Governor has an even bigger problem, because he is supposed to know what he is signing into law. And most of these bills all pile up at the end of the session, and the Governor is faced with an impossible task.
>
> Worst of all, pity the average citizen, for whom all these laws are supposedly being passed. How can he know about all these laws, growing longer and longer every year?
>
> What is the remedy for this growing evil?" *

---

* Slightly revised.

Well, now you are expected to answer Chairman Barfield's challenge. The folks back home are sick and tired of the legislature meeting longer and longer every year and passing all kinds of special or local deals for their friends. Prepare a short three-point speech indicating why you recommend eliminating special and local legislation. Now examine Article IV, Section 22 and Article IV, Section 23 of the Indiana Constitution. You'll see that the power to pass special and local legislation was taken away from the legislature. Instead, you'll see that the legislature has the responsibility to pass general laws which are to be uniformly followed throughout the state.

Unit II
Chapter 2
Section 3 - How the 1850-51 Constitutional Convention Worked to Make Indiana's Government More Democratic

- Why did Indiana citizens complain that the first Constitution was not democratic enough?
- How did the delegates make Indiana's second Constitution more democratic?

You have already read that many Indiana citizens believed that their state government was not democratic enough. What they meant was that the First Constitution placed too much power in the hands of a few selected officials and legislators. The 1816 Constitution seemed to follow the principles of Jeffersonian Democracy, but the majority of delegates to the 1850-51 Convention favored Jacksonian Democracy.

What are the differences between these two philosophies of government, and why is it important to understand those differences as we study Indiana's 1851 Constitution? Listed below are characteristics of each. As you compare these two views of government, see if you can answer these questions:

1. What are the major differences in regard to elections and property qualifications for voters?
2. Which seems to have more faith in the average person's ability for self-government?
3. Which favored a stronger legislature? Explain.
4. What is the difference between the two philosophies in terms of public education? Is this difference important?
5. Which expressed more distrust of judges?

Jeffersonian Democracy followed principles associated with President Thomas Jefferson.

1. All property holders (meaning white, male, adult property owners) should vote for representatives who will then serve as governor, legislators, judges, and local officials.
2. It was expected that the more able men--or as Jefferson referred to them, "the natural aristocrats"--would be elected.
3. To make sure that natural aristocrats would arise from the average white male population, public education should be supported. This gave every man an equal chance to be able to vote wisely and perhaps to be an officeholder.
4. These more able men who were elected to the legislature would, in turn, elect other state officers such as Secretary of State, Treasurer, and Auditor.

Jacksonian Democracy followed principles associated with President Andrew Jackson. Jacksonian Democrats believed in many of the Jeffersonian principles, but they felt that government ought to go further in trusting and depending on the average citizen. Here is what they believed:

1. All white, adult men, including recent immigrants, should be allowed to vote and run for public office. There were practically no property qualifications.
2. The average male citizen should be able to vote for more state and local officials, including judges.
3. The Indiana Legislature had too much power to elect state

officers and judges. It met too often and too long, and it cost too much.

4. Officeholders should have shorter terms so they don't gain too much power. That also would give more chances for average persons to be elected.
5. The Indiana Legislature did too many special favors for friends through special and local legislation. Only people who knew legislators seemed to get anything done, and that was undemocratic.
6. To make sure that the average man knew who or what he voted for, public education should be supported by the state. All white children, male and female, should attend those schools.

Now that you have seen some of the differences between Jeffersonian and Jacksonian Democracy, you should know that 95 of the 150 Constitutional Convention delegates considered themselves Jacksonians. Many were determined to allow more white males to vote and hold public office. They wanted to reduce the Legislature's power and they wanted to make sure that more children attended free public schools.

How Indiana's Second Constitution Made Our State Government More Democratic

The 1851 Constitution made it easier to vote. After it became official, white males over 21 years of age who had lived in the state for six months could vote. White males of foreign birth, like the Irish canal workers and the Germans who fled the 1848 European revolutions, could also vote if

they lived in Indiana for one year immediately before an election. Federal law prevented these recent immigrants from voting in national elections until they had lived five years in the U.S., but they could vote in Indiana elections as long as they intended to become U.S. citizens.

Voters elected more state and local officials. Compare the list of offices elected by the average voter under the 1816 Constitution and those under the new Constitution.

1816 Constitution	1851 Constitution
Governor	All those in the 1816 Column
Lieutenant Governor	PLUS:
State Representative	Secretary of State
State Senator	Auditor
County Officers	Prosecuting Attorney
Clerk	Superintendent of Public Instruction
Sheriff	
Treasurer	
Coroner	
Surveyor	
Township Officials	

The post-1851 voter had more decisions to make when he went to vote and more control over who served in government positions.

Elected officials had less power. Neither the Governor nor Lieutenant Governor could be re-elected until four years

after their first term had ended. The Secretary of State, Treasurer, and Auditor could serve only a two-year term compared to three years under the 1816 Constitution. The General Assembly could only meet every two years and only for 61 days, unless the Governor called a special session. This was a very popular change. The Fort Wayne Times applauded the idea by saying, "We have no hesitation in believing that more of the voters of the state of Indiana supported the calling of the Convention upon this one ground, than all others combined."

Democracy and Public Education

Since voters had more power to elect officials, they needed to know more about the operations of government. In the Northwest Ordinance, Thomas Jefferson had written that: "Religion, Morality, and knowledge being necessary to good government and the happiness of mankind, Schools and the means of education shall forever be encouraged." The 1816 Indiana Constitution agreed with Jefferson, but only in spirit. The section which dealt with education provided a major loophole. Can you spot the phrase in the following passage that gave the Indiana government an excuse for not spending money for public education?

> Constitution of 1816: Article IX, Section 2
> "It shall be the duty of the General Assembly, as soon as circumstances will permit, to provide, by law, for a general system of education, ascending in regular graduation, from township schools to a state university, wherein tuition shall be gratis (free) and equally open to all."

Of course, some schools existed, and the people running for office claimed to be for schools, but there was no general system of education. Apparently "circumstances" did not permit any such expenses.

The Constitutional Convention of 1851 squarely faced the responsibility of providing for free public education. Caleb Mills, a professor of Latin and Greek at Wabash College, wrote six major letters to the state legislature and to the Constitutional Convention. In his crusade for public education, Mills pointed out that Indiana had borrowed millions for canals, railroads and highways, but had not raised one dollar to improve children's minds. Other friends of education joined in the struggle to make Indiana live up to its 1816 promises. The result is Article VIII of the 1851 Constitution:

> Constitution of 1851: Article VIII, Section I
> "Knowledge and learning, generally diffused (spread out) throughout a community, being essential to the preservation of a free government; it shall be the duty of the General Assembly to encourage, by all suitable means, moral, intellectual, scientific, and agricultural improvement; and to provide, by law, for a general and uniform system of Common Schools, wherein tuition shall be without charge, and equally open to all."

1. How was this section on education different from the Constitution of 1816?

2. How does this part of the 1851 Constitution reflect Jeffersonian and Jacksonian principles?

3. How could you argue that free public education actually helps Indiana to remain democratic?

4. If you saw a bumper-sticker which read: "If you think education is expensive, try ignorance," how would you explain it? How would Caleb Mills have explained it?

Application: Study the enclosed pie chart from Here Is Your Indiana Government (Indiana State Chamber of Commerce, 1979, p. 57).

1. Does it appear that Indiana government still follows Article VIII, Section 1 of the 1851 Constitution?

2. What percent of Indiana's 1979 tax dollar went for local schools? For higher education? For both combined?

3. Find any newspaper clippings which deal with spending for schools. Underline the dollar amounts and indicate whether there are increases or decreases in spending for schools.

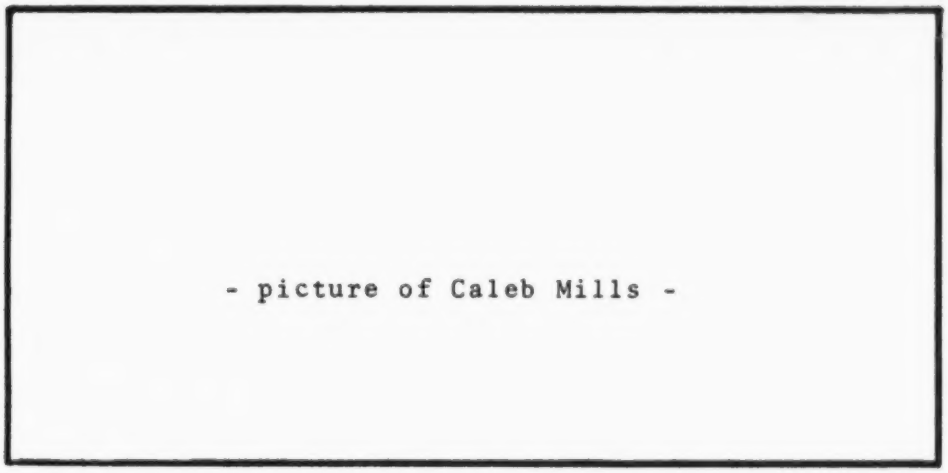
Hoosier Profile: Caleb Mills, "One of the People" (1806-1879)

Caleb Mills ranks at the top of Indiana's educators because of his vigorous campaign for free public schools. A native of New England, Mills graduated from Dartmouth College in New Hampshire. He came to Indiana to start a classical school in Crawfordsville in order to train teachers. This school, founded on December 1, 1833, became Wabash College. In earlier travels, Mills observed that the general level of education among settlers was very weak: "Only about one child in eight between the ages of five and fifteen was able to read. One seventh of the adult population could not read, and a large number of those who could read did so imperfectly." One way Caleb Mills could fight this illiteracy was by training teachers, but he also felt that the state government needed to support public education.

Mills launched a one-man writing campaign in six master-

ful letters to state legislators and delegates at the Constitutional Convention. Signing his letters "One of the People" and getting them reprinted so that copies would be available for influential Hoosiers, Caleb Mills began a campaign that ultimately resulted in Indiana's full support of public education. "One of the People" pointed out to the legislators that "Only one in three of the children of school age attends any school." Governor James Whitcomb took note of the first of these letters and remarked that something must be done for public schools in Indiana--the first Governor to do so. In 1848 the voters were asked to vote in favor of free schools, and the results showed 78,523 for public education and 61,887 opposed. Mills interpreted this as a victory for his cause and urged the legislature to take action.

The 1849 Legislature enacted a school law providing for consolidation of schools and a state tax for the support of schools. The Constitution of 1851 made it very plain (see Article VIII, Section 1, page 00) that Indiana would support its common schools. Mills rejoiced in his sixth and last message congratulating the people and the legislature for "evidences of progress" and "the approach of a better day." All this good could be realized if the legislature would "without further delay, establish free schools." He showed how the state school system ought to be organized, financed, and supervised. Feeling satisfied that Indiana was now well on the way toward free public education, "One of the People" put down his most eloquent pen.



Recognized state-wide for his support of public education, Caleb Mills was elected in 1854 as Indiana's second Superintendent of Public Instruction. In his three-year term, Mills furthered support for libraries, consolidation of smaller schools into larger institutions, and the establishment of four normal (teacher-training) schools. In his remaining years, Caleb Mills, "One of the People," devoted his time to improving and enlarging the Wabash College Library. Throughout his later career, he was honored for his considerable contribution to free public education for all Hoosiers.

Unit II
Chapter 2
Section 4 - How Did the 1850-51 Constitutional Convention Try to Solve Indiana's Financial Problems and Fail to Solve Certain Human Problems?

- How did the delegates face up to the embarrassment of Indiana's growing debt in 1850?
- How did the delegates try to compromise between two systems of banking?
- How did the delegates back away from granting more rights to women?
- How did the delegates face the problem of a possible large increase in the black population of Indiana?

All four of those major questions took up many hours of debate. Each still has current importance, but not for the same reasons as in 1850-51. We will examine the historic reasons why these questions took up so much time, and then we will see how modern students look at these questions.

Indiana's Growing Debt (1850-51)

In a previous section you learned that the Constitutional Convention delegates decided to take power away from the General Assembly because of the evils of special and local legislation. They developed a number of controls, such as limiting the Legislature to biennial sessions lasting no more than 61 days unless the Governor called a special session. However, there was another major power the delegates were insistent about. The Legislature would never again be allowed to get the state into a huge debt! Some delegates expressed

anger at the financial mess caused by previous legislatures and governors when the "internal improvements" craze has hit Indiana. Canals, turnpikes, and railroads might be useful to have, but someone had to pay for building them. Should it be the generation that wanted them built, or the children and grandchildren who would benefit from the "internal improvements" later? The state was nearly $13 million in debt, and there seemed to be no fair way to pay it off.

Read these short selections from the Convention debates to understand the concern the delegates had about the state debt. Watch for the solutions they proposed and decide if you agree with them.

Schuyler Colfax (Whig, South Bend)
from Constitutional Debates, Vol. 1, p. 653.

> "When we look back upon the scenes of excitement through which our State has passed--when we remember that so enthusiastic were the people in favor of the mammoth (internal improvements) system, that they would as heartily and as strongly, and as overwhelmingly have voted for its adoption at the polls, as did their Representatives in the Legislature, it does seem as if, now in our cooler moments, with the result of that infatuation (craze) in full view before us we should so act as to prevent, if possible, their repetition. Let us resolve, and place it in this instrument (new Constitution) beyond repeal, that no more State debt shall hereafter be created upon any pretext whatever."

Q. Did Colfax think the average man was immune from voting for "internal improvements" and thus causing a large debt?

Q. What was Colfax' solution to Indiana's debt problem?

Robert Owen (New Harmony)
from Readings in Indiana History, Indiana Historical Bureau, compiled by Gayle Thornbrough and Dorothy Riker, 1967, p. 365.

"If there be a wholesome Constitutional restriction, this bar to the increase of a public debt in the future surely is one."

Q. Did Owen agree with Colfax that the Constitution had to prohibit any more state debt?

Owen, again:

"Moved by the excitement of the day, and misled by fallacious (false) estimates they (the voters) would have involved the State in the very same debt with which she is now burdened."

Q. Did Owen have the same opinion about the average voter as Colfax?

You should see that at least two delegates did not trust the average voter. People could be misled by promoters for canals, railroads, and turnpikes. There was only one way to end the danger of getting hopelessly into debt again, and that was an absolute Constitutional ban against any future financial follies.

Study Article X, Section 5 of the 1851 Indiana Constitution to see how the delegates solved the debt problem. You will notice that there are just a few exceptional cases when the state may go into debt temporarily.

Article X, Section 5

"No law shall authorize any debt to be contracted, on behalf of the State, except in the following cases: To meet casual deficits in revenue; to pay the interest on the State debt; to repel invasion, suppress insurrection, or, if hostilities be threatened, provide for the common defense."

Another part of Article X provided for paying off the existing debt in annual payments which lasted until 1916. Indiana also cancelled its promise to pay any of the outstanding debt on the Wabash and Erie Canal.

Q. How is a large debt harmful to the credit of a state?

Q. What do you think we as citizens gain by living in a state which does not go into debt?

Q. What are some of the possible sacrifices (things which we give up) of living in a state which does not go into debt?

Q. Does this prohibition against a state debt make Indiana more advanced than other states? more backward?

The Banking System

The second major concern of many delegates was Indiana's banking system. It may not seem so urgent in our times, but at the 1850-51 Convention, 53 different delegates spoke about banking practices. Some spoke as many as ten times on the subject. They talked about every conceivable aspect of the topic: history of banking, benefits and evils of banking, legal and constitutional basis, alternative systems, and possible effects upon the distribution of wealth. One delegate, William McKee Dunn, compared the banking debate to the problems facing Jonah in the Old Testament:

> "We read that Jonah was in the whale's belly, three days and three nights--that the floods compassed him about, the billows and the waves passed over him, and the weeds were wrapped about his head. As pitiable as was the condition of poor Jonah, it was not more so than is that of the subject of banking, which this Convention has now had under consideration for more than twice three days and three nights. Truly may we say of this important subject, that the billows and waves have been passing over it, that the depths are closing round about it, and that the weeds are rapidly accumulating about its head."
>
> (Barnhart, John D. and Carmony, Donald F., Indiana: From Frontier to Industrial Commonwealth, Lewis Historical Publishing Co., Inc., New York, 1954, p. 71)

Q. According to William McKee Dunn, how long did the debate on banking last?

Q. Did it appear to him that the subject was becoming clearer in the minds of the delegates?

There were three distinct groups of delegates who spoke about Indiana banking. One group, primarily Whigs, wanted to continue the Indiana Second State Bank started during a Whig administration. This, of course, meant a monopoly by the state. The Democrats, most of whom were Jacksonians, were suspicious of a state-run bank. Jacksonian Democrats believed that a state bank benefited a few rich persons at the expense of Indiana farmers and workmen. One Democrat newspaper went so far as to call the State Bank "unsound, rotten and corrupt--aye, even to the core."* The third group of delegates were "hard money" men who would have liked to have no banks at all. Even this group realized, though, that banking probably was a necessary evil.

Since none of the three groups held the balance of power, some compromise had to be made. The result of all the debating was Article XI dealing with corporations and banks. Indiana ended up with what is known as a dual system of banking. There would be a Third Indiana State Bank, and there would be provisions for "free banking," but this "free banking" would be subject to many regulations drawn up by future legislatures so that citizens would not be swindled by shady

*Quoted in Barnhart and Carmony, Indiana: From Frontier to Commonwealth, Lewis Historical Pub. Co., Inc., New York, 1954, p. 68.

banking practices. "Free banking" allowed far more persons to operate banks, so it was considered more democratic. Some of these banks would fail later in the 1850's.

In summary, these two questions of state debt and banking systems were very important in the 1850's. In varying degrees they still are quite important to us. Indiana prides itself on being "debt free," though some might argue that the citizens of the state have unnecessarily passed up useful services and practices. As far as banking law is concerned, most Indiana citizens care very little about such a complex topic. Yet, bankers in every Indiana community are aware of what goes on in the Indiana state legislature because of the possible effect on banking practices. Practically every political gathering in Indiana has some interested banker in attendance.

Women's Rights

The remaining two questions dealt with human rights rather than financial matters. The modern student can probably identify with these two more easily. First, let us see how the 1850-51 Constitutional Convention discussed granting more rights to women.

Married women had practically no right to own property according to Indiana law. Any property that a woman brought with her to a marriage could easily be claimed by her husband. If the husband were a drunkard or gambler and piled up large debts, creditors could take all his property, including that of his wife. There was no protection for her property at all!

Some Indiana women knew that the Constitutional Convention could solve this problem, but no woman could speak directly on the floor of the Convention. They relied on Robert Owen to present their cause. They also presented petitions through other delegates and wrote newspaper articles. Owen proposed that married women have the right to acquire and possess property for their own use. Owen also asked for laws which would protect a woman's rights to property which she may have had before marriage. Finally, he proposed a system of registering a wife's separate property.

The delegates argued strenuously about giving married women the right to own property. Both sides referred to ancient Roman history, the Bible, and English Common Law to make their points. Schuyler Colfax, ordinarily rather progressive in his thinking, feared Owen's proposition as one "striking at the very foundation of our social fabric." Others feared that women would abandon domestic chores to go out into the market to buy and sell. They charged that "...the proposed law would throw a firebrand into a thousand happy homes." But Owen was a match for most of these arguments. He demonstrated brilliantly how some speakers had misused Roman history by quoting only the parts that made their case strongest. He referred admiringly to the women who were observers of the Convention's work. He argued that the Constitution was an appropriate place to "assert a right thus unjustly withheld."

A delegate named Sherrod joined Owen's cause in a well-organized address to the Convention. Sherrod tried to assure the opposition that he was not for putting women in the military, breaking up homes, giving women the vote, or seeing them elected to public office. Nor did he think women should enter the legal or medical professions. However, on one point he was quite clear: "I contend that for the wife there is no law, but that of injustice." He scorned the current laws which permitted this situation:

> "...we enlightened Christians can see the mother and her offspring turned from home and thrown dependent on the cold charities of a heartless world to satisfy, it may be, a debt contracted at the gaming table or race course by a profligate (wasteful) and drunken husband."

Sherrod concluded by saying that he would vote to protect the property rights of women as a matter of justice.

Opinions were closely divided on this issue as Owen's motion passed a few times, was reconsidered, and finally went down in defeat by the extremely close vote of 68-63. Owen did not give up. He later asked the Indiana legislature to pass a state law protecting a married woman's right to own property.

Modern students may consider Indiana backward in not granting property rights to married women in 1850-1. They should keep in mind that the vote was extremely close in the Convention, that neighboring states were at similar stages of development, and that shortly after the Convention Robert Owen began the long march for greater equality for women.

The 13th Article: Bad Luck for Indiana?

The fourth question which took much of the Convention's time is an extremely controversial (troublesome) and even embarrassing one. How do we explain today that a majority of Indiana voters deliberately excluded free Negroes from coming into the state in 1851? Here, more than anywhere else, we need to look at the problem in historical perspective, meaning by understanding the beliefs and practices at that time. It's necessary to get the historical facts before jumping to the conclusion that Indiana was more racist than other states.

The Historical Background. Both the Northwest Ordinance of 1787 and the 1816 Constitution made slavery illegal in Indiana. Some Southerners who moved into the state kept their slaves as late as the 1830's despite the Constitutional prohibition. Although we know today how wrong racism is, most white Americans at that time did not believe in racial equality.

A few months before the Convention debated Negro Exclusion, the U.S. Congress has reached the Great Compromise of 1850. It allowed California into the Union as a free state, provided for a stronger Fugitive Slave Law, and established the principle of popular sovereignty in the new territories. Popular sovereignty meant that the people in the territories could decide by vote whether or not to allow slavery. The confusion and anger of that national crisis left its mark on the delegates to Indiana's Constitutional Convention.

Many Northern states took steps to prevent Southern states from "dumping" used-up or unmanageable slaves on the North. Kentucky had already begun forcing out free blacks, and most were moving into Ohio, Indiana, and Illinois. Both Illinois and Ohio, and even states as far away as Oregon, took measures to prevent black migration across their borders. The California General Assembly voted narrowly 32-30 to permit free black settlement, even though the U.S. Congress had debated that very issue for weeks. So when Indiana added the Negro Exclusion Article (Article XIII) to its Constitution, it was not alone. Furthermore, even free blacks were steadily losing all political rights in the North with the exception of a few New England states.

The Negro Exclusion Debate in the 1851 Convention. The feelings expressed on Negro Exclusion ranged from the radical abolitionist group who wanted to abolish slavery everywhere to the extreme racist views of delegates who believed blacks were not even human. John Beard of Wayne County presented a petition from the "Friends of the Congregational Order," a branch of the Quakers. The petition favored "abolition of all distinction (discrimination) between inhabitants of the state on account of color." In 1850, that was a radical position! Some delegates didn't even want to receive the petition and charged that the group was "composed of abolitionists, renegade quakers, and negroes." When Schuyler Colfax proposed that blacks be allowed to vote--a bold

proposal considering the attitudes of the times--a delegate named Dobson interrupted Colfax by saying that anyone who voted to give blacks the vote should himself lose that privilege. Dobson stated that three-fourths of all Indiana voters agreed with him, and he may have been right.

Finally, the delegates decided by the overwhelming vote of 94-36 to exclude blacks. The 13th Article stated that "No Negro or mulatto (persons of mixed racial background) shall come into or settle in, the State" after the adoption of the Constitution. Furthermore, Negroes currently living in the state would be urged to go elsewhere, and whites who helped blacks into Indiana would be severely fined. The money collected would be used to finance Negro colonization efforts--a plan to resettle blacks in Africa.

The delegates believed the entire question of Negro Exclusion should be submitted to the voters separately from the rest of the new Constitution. They knew that public opinion was deeply divided on any question dealing with Negro rights. Even though Indiana was hardly an abolitionist state, there were many citizens who might vote against the new Constitution because of Article 13. The expense of more than $80,000 and four long months of debate would be wasted if the new Constitution was rejected because of a Negro Exclusion Article.

Therefore, the voters decided two questions on August 4, 1851.

1. For or Against the Constitution.

2. For or Against Article XIII prohibiting free Negroes and mulattoes from coming into Indiana.

The results of that election as announced by Governor Joseph Wright were:

For the Constitution	109,319
Against the Constitution . .	26,755

For keeping Article XIII in Constitution . . .	109,976
Against Article XIII . . .	21,066

After four months of sometimes stormy debate, pages and pages of writing, and expenses of more than $80,000, Indiana finally had a new Constitution. In the next chapter we will analyze its major parts. Later in the book we will examine portions of the 1851 Constitution that have been changed. Here's a "teaser question," though. Where's Article 13? If you look up Article 13 in today's Constitution, you'll read about limits on a city's taxing power. What happened to the Negro Exclusion Article?

Questions for Discussion

1. Was the question dealing with Negro Exclusion the most controversial topic of the 1851 Convention and for the 1851 voter? What about for the modern reader?

2. Negro Exclusion is viewed as racist and wrong by today's readers. How can the 13th Article be explained by using historical perspective?

3. If you wanted to show that not all whites were against black migration into Indiana, what facts would you use?

4. Why did citizens vote separately on the Constitution and Negro Exclusion? From the voting results, was Delegate Dobson correct in his statement about Indiana voters?

Unit II
Chapter 3 - ANALYSIS: FEATURES OF THE SECOND CONSTITUTION
Section 1 - Constitutional Framework of Indiana's Government

If you decided to buy a new bicycle, you would undoubtedly get an "owner's manual," which would describe the key features of your new bike and how to service it, and it would probably include a guarantee. Indiana's new Constitution had no such "manual" but it did have:

1. a recommendation from the Constitution writers to adopt the document;
2. a "guarantee" from the voters that it was acceptable;
3. a way of changing the Constitution if parts ever needed "repair or replacement."

Let's examine Indiana's 1851 Constitution for key features which still have meaning today. After discovering how the major parts of Indiana's government are supposed to work, we'll look at the parts that caused the most trouble. That will lead us to the amending ("repair and replacement") process. Then we'll see what has happened to the amending process in recent times. Later in the book, we'll examine several issues that help explain how the Constitution works.

Key Features of the 1851 Constitution

The new Constitution distributed power among three branches of government. In that way it was similar, but not identical, to the U.S. Constitution. Here is Article III:

> "The powers of the Government are divided into three separate departments; the Legislative, the Executive including the Administrative, and the Judicial; and no person charged with official duties under one of these departments, shall exercise any of the functions of another, except as in this Constitution expressly provided."

Article III seems very simple and direct. It separates all government power into three distinct branches: legislative, executive, and judicial. But some of Indiana's greatest constitutional battles came about when one branch tried to do the job of another. The Indiana Supreme Court usually settled problems between the executive and legislative branches. Later we will examine a few of these constitutional battles. For now, let's look briefly at the most important aspects of each branch of government.

The Legislative Branch

Article IV, which is quite lengthy, laid out the boundaries of size and power for the new legislature, known as the General Assembly. The General Assembly consists of two chambers, or houses: a Senate with 50 members and a House of Representatives with 100 members. Senators are elected for four-year terms, but only half are ever up for election in the same year. There are always 25 incumbents (senators remaining in office) and 25 seats open for election. All 100 representatives in the lower house must run for election every two years.

1. In which house, the Senate or House of Representatives, is there greater stability?
2. In which house, the Senate or House of Represent-

atives, is there a greater change of membership each election and therefore of ideas concerning state problems?

There was to be an adjustment every six years of the boundaries of senatorial and representative districts. A census (counting) of all white males over 21 determined these districts. This re-drawing of representative districts according to changes in population is known as "reapportionment." In a reapportionment, districts which are sing population or are not growing as fast as others lost representation to the more rapidly growing districts. Watch for reapportionment battles later when the General Assembly's membership refused to change to reflect population shifts.

The legislative Article IV also limited the time the General Assembly could meet. It could be in session only 61 days in any two-year period (known as a biennium). This shortened legislative session directly reflected how Indiana voters felt in 1851 about a legislature which had put the state into debt and spent so much time on special and local legislation.

Powers Given to the Legislature

- What general powers are given to the Legislature?
- What powers does the Legislature have over local government?
- What specific powers are given to the Legislature?

The 16th section of Article IV states that: "Each House shall have all the powers necessary for a branch of the

Legislative department of a free and independent State."

Among these general legislative powers are the following:

1. The Legislature decides the types of state taxes on citizens and businesses and the rate of these taxes.

2. It creates and abolishes agencies of state government.

3. Through its budget-making power, the Legislature decides how much state money should be spent on government services.

4. It determines nomination and election procedures of state and local governmental officials.

5. It sets up rules for local governments such as cities, towns, townships, and counties.

6. It can authorize or prohibit various types of local taxes.

7. It determines how state-collected tax funds will be distributed locally for schools, highways, and other purposes.

It is especially important for you to note just how much power the state Legislature does have over local units of government. Items 4, 5, 6 and 7 above show that the Legislature has a lot to say about how local governments operate, how they are supported, and how local elections are run. You remember the specific prohibition of the state Legislature from dealing with many <u>special</u> and <u>local</u> cases (Article IV, Section 22). Now it is vital that you also study Article IV, Section 23, which states:

> "In all the cases enumerated (listed) in the preceding section and in all other cases where a general law can be made applicable, all laws shall be general, and of uniform operation throughout the State."

This means that although the Legislature should not enact special and local laws, they can create laws which regulate

local matters if those laws are so general as to apply to the entire state. Then it can hold local units of government responsible for carrying out the laws. Furthermore, the General Assembly can delegate certain legislative powers to local government units like town boards, city common councils, county councils, and township advisory boards. Some critics of Indiana's Constitution argue that not enough freedom or "home rule" is given to local governments. This "home rule" argument began in 1851 and still continues today. One expert on state government wrote:

> "About the only 'home rule' power which Indiana cities have is the authority granted by the General Assembly to determine the salaries of city officials. They can levy only those taxes permitted by the General Assembly; they can perform only those government services specified by the General Assembly; and they can incur only such indebtedness (go into debt) as is permitted by the General Assembly. The absence of 'home rule' in Indiana seriously limits Indiana cities."
>
> W. P. Maxam, Indiana Government, 1967.

1. What are some possible advantages of having most general laws passed by the state Legislature? disadvantages?
2. How does the absence of "home rule" hurt local government?

Thus far, you have seen that the Indiana Legislature has many general powers to make laws, both for the state and for many local units of government. The Legislature also has a number of specific powers. Among these specific legislative powers are the following:

1. The Legislature can deny the right to vote to a person convicted of an infamous or serious crime.

2. It provides laws for election of general and appellate court judges at special elections.

3. It can punish senators or representatives for disorderly behavior by expelling them.

4. It can punish by imprisonment any person not a member of the General Assembly who is found guilty of disrespect to the Legislature by disorderly and contemptuous behavior.

5. It can impeach (charge with a crime and then dismiss) any state officer for crime, incapacity or negligence. This can be done either by joint resolution (both houses pass a motion) or through an impeachment procedure brought by the House and tried by the Senate.

Activity

General and Specific Powers of the Legislature (adapted from Indiana Government, Learning Activity Package, from Here Is Your Indiana Government, published by Indiana Chamber of Commerce, 1979).

I. List whether the following areas are considered general powers or specific powers of the General Assembly.

	General Power	Specific Power
1. Set up rules for how a township may buy a fire truck.	_____	_____
2. Authorize local county taxes.	_____	_____
3. Punish a state senator for disorderly behavior.	_____	_____
4. Abolish the Indiana Youth Council.	_____	_____
5. Impeach state official for negligence in office.	_____	_____
6. Set rules for absentee voters in a local election.	_____	_____

		General Power	Specific Power
7.	Decide to levy an income tax of 2% on all income earned in Indiana.	_____	_____
8.	Punish a person who is disrespectful to the Indiana House of Representatives.	_____	_____
9.	Forbid a convicted person from voting.	_____	_____
10.	Develop a state budget increasing aid to local schools.	_____	_____

II. Develop a list of questions to ask a state legislator, city official, or school board member about how the General Assembly limits what a local unit of government can do. Report back to class after your interview.

(Hint: Legislators often hold open forums on weekends during the legislative session. City and county officials as well as school board members often have their phone numbers listed in the newspaper. Be courteous, well-organized, and appreciative for any assistance they may give you. Be fair in reporting back to the class about their answers.)

Unit II
Chapter 3
Section 2 - How the Indiana General Assembly Makes Laws

The job of the Indiana legislature--the General Assembly--is to pass laws. Every year, Hoosiers look to the capitol building in Indianapolis where 100 representatives and 50 senators decide what new laws are needed. Hundreds of bills (proposed laws) must be read, discussed and amended. Finally, if both houses of the General Assembly pass a bill, it goes to the governor. When he signs it, it becomes a new law. Here are six questions we'll answer in this section:

1. Where do ideas for laws come from?
2. What steps does it take for a bill to become a law?
3. How can a bill be defeated?
4. What role does the governor have in lawmaking?
5. How can average citizens have a voice in the lawmaking process?
6. What are "lobbies" and how do they work?

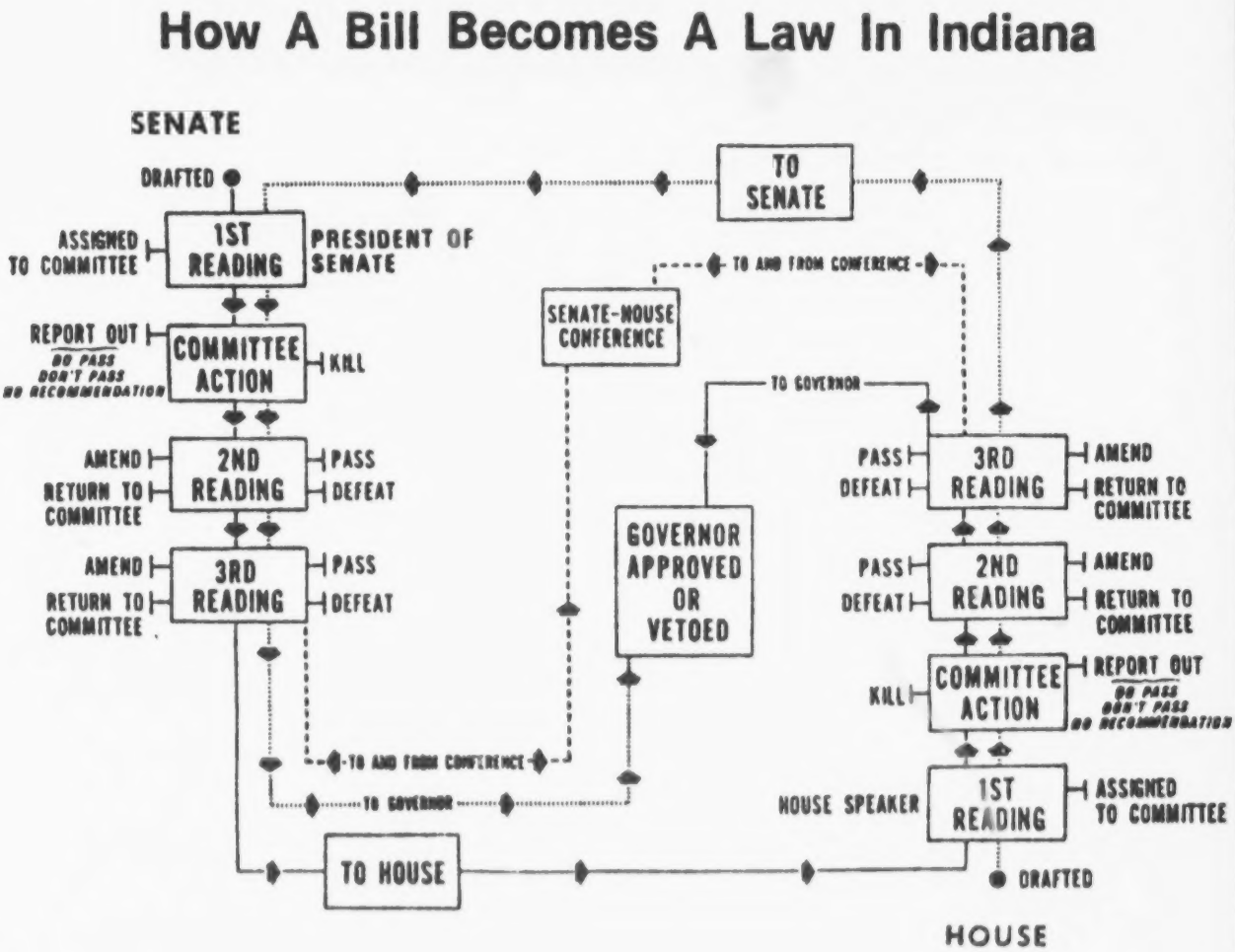
Ideas for Bills

Ideas can come from almost any source. The governor usually has a program including many ideas he wants made into laws. Interest groups like the Indiana Farm Bureau, the American Federation of Labor, or the Indiana School Boards Association have their own ideas, too. Citizens may express themselves individually or write to their representative about a local problem that needs a solution. And, of course,

legislators themselves may write bills they would like to become law. No matter where the idea for the bill originated, it has to be sponsored by a legislator for it to be considered in the General Assembly.

Steps a Bill Must Go Through to Become a Law

The easiest way to follow a bill through both houses to the governor's desk is to study the following diagram.



From Here Is Your Indiana Government, Indiana State Chamber of Commerce, 1979-1980 Edition, page 5.

Let's follow a proposed bill to create a new state park. Since it is favored by the governor, important interest groups, and a state senator, the bill has little difficulty being introduced on the floor for First Reading. The president of the Senate, who is the leader of the majority party, assigns the bill for the new state park to the appropriate committee. In this case, it would be the Committee on Public Parks and Natural Resources.

The committee studies the bill and listens to arguments for and against the new park. Citizens may speak for or against the bill in the committee hearing. For example, recreation interest groups would support the new park because it would bring new opportunities to that part of the state. A local chamber of commerce might favor the park because it would help businesses in the area. Of course, the other side would be heard as well. A taxpayer's group might argue that the new park would cost too much. Local farmers might argue that the land should not be taken away to be used for a park. Private citizens might not want the additional traffic congestion or hamburger stands near their property. After the committee hears both sides, it votes. Look at the diagram again. You can see that the committee could report out the bill with a "do pass" recommendation. Or they could decide on a "don't pass" recommendation. Finally, the committee could simply "kill" the bill, which means the bill would not even be reported out of committee. The committees are the most important step in lawmaking. A "don't pass" report

almost always means that the bill will not become law.

Let's assume that the committee reported the bill out with a "do pass" recommendation. It is now ready for Second Reading. This takes place on the floor of the Senate since the bill was originally introduced there. During the Second Reading all interested senators may take part in debating the new park bill. Suppose a senator wants to have the park reduced in size and that he makes an amendment to the park bill. If the amendment passes, the bill may be ready for Third Reading. Or the Senate may feel that more study is needed and the bill is sent back to committee.

Finally, the bill is ready for Third Reading. This time the bill is printed on colored paper (usually bright yellow) to call attention to the fact that it is ready for final reading. Voting this time is by roll-call vote, not just voice vote. This means that every Senator's vote is recorded. In order to pass, the new park must receive a constitutional majority. That means 26 out of the 50 Senators must vote in favor of the bill.

If you look at the diagram again, you will see that the new park has gone only half-way through the process. Now the bill has to go through all the same steps in the House. Sometimes, on important issues, a bill might be moving through both houses at the same time, but usually they do not move at the same rate.

Conference Committees

Before a bill leaves the General Assembly, there's almost always another step. Usually each house passes a different version of the same bill. In our example, the Senate might have wanted a larger park or the House bill may have included a lake that was left out of the Senate's bill. Both houses must approve the exact same version of the bill. In almost every case, a conference committee made up of members from both the House and Senate is formed. It works out any differences and the bill is sent back to the House and Senate floor for final approval.

The Governor's Signature

Once both houses pass the bill, it is sent to the governor's office. The governor has three choices:

1. Sign the bill. In that case, it becomes a law.

2. Do not sign it. After seven days, the bill becomes law automatically. A governor might do this to show dissatisfaction with a part of the bill. For example, the governor might have wanted a larger state park.

3. Veto the bill. This means blocking the bill from becoming law. The governor is required to send it back to the General Assembly with written reasons for its rejection. If both houses pass the bill again by a constitutional majority (51 votes in the House and 26 in the Senate), the bill becomes law over the governor's objections. If either house fails to pass the bill again by a constitutional majority, the governor's veto is upheld and the bill does not become law.

Does It Really Work That Way?

This is how all Indiana laws are made. It's a long process, but sometimes that helps. Every bill is looked at, debated, and amended several times. In emergencies, the General Assembly and governor can work together very quickly. During the Great Depression of the 1930's, important laws were introduced, passed, and signed by the governor in a few hours. But it usually takes months for a bill to go through the whole process. Most of that time is spent in committee hearings and debates.

Who Can Influence the Lawmaking Process?

Every citizen can have a voice in making laws. Nearly every law helps some individuals or groups and may harm others. A law to allow heavier trucks on Indiana highways would help truckers and trucking businesses. But taxpayer groups might argue that road repair costs would rise. A law that gives tax reductions for people who buy wood stoves would be supported by people who sell them. However, dealers who sell gas or electric furnaces might oppose the law because it hurt their business.

Citizens usually become most involved in the lawmaking process when they have something to gain or lose. This is how a democracy works. You may not be very interested in laws that the Indiana General Assembly passes--but what if you heard that they were debating about requiring all bicyclists to pass a test, pay a $20 license fee, and have head-

lights and taillights? What about a law raising the minimum automobile driving age to 18? Or a law requiring all public school students to wear uniforms? Boys would wear white shirts and blue slacks and girls would wear blue blouses and plaid skirts. Would you be interested in Indiana laws then? Can you think of any individuals or groups who might be in favor of these laws?

Individual Citizens, Interest Groups and Lobbies

Many people try to influence the lawmaking process. They may want to suggest a new law or they may be against a proposed law. Either way, they want to let the members of the General Assembly know their opinion. Sometimes individual citizens express their opinions through letters, phone calls, or personal visits. Often, individuals join with others to form "interest groups," which means a group of people with similar interests or opinions. These may be permanent groups like the Indiana Farm Bureau or the Indiana State Teachers Association. An interest group might spring up temporarily to try and influence lawmaking. An example of a temporary interest group would be a group of citizens opposed to a new state park. Once the decision was made, the group would no longer have a reason to band together.

Whenever an interest group or an individual tries to influence the lawmaking process, they are called "lobbyists." Years ago, people used to stand in the lobbies of capitol buildings and try to persuade legislators to vote one way or

another. This is where the term "lobbies" and "lobbyists" began. They tell legislators how their group feels about a particular bill. Sometimes they provide information and statistics to legislators. Thus, they play a valuable role in the government. However, lobbies are sometimes accused of putting too much pressure on legislators and of influencing them too much. Occasionally lobbyists have misused the privilege of being close to the legislators. Strict laws now ensure that the lobbyists act honestly and for the benefit of their interest group.

If you visit the state capitol when the General Assembly is in session, you can see lobbyists in action. Just outside the House or Senate chambers, there are several chairs. Usually they're filled with men and women waiting to talk with legislators before they vote. Lobbyists also testify for or against bills in committee hearing rooms. See if you can match the interest group or lobby with the bill they would be most interested in supporting:

__Chamber of Commerce	A. Increased pay for school crossing guards.
__Indiana Dairymen's Association	B. Temperature regulations for storage of milk.
__League of Women Voters	C. Decrease in taxes on businesses.
__American Federation of Labor	D. Easier registration of voters.
__Parents and Teachers Association	E. State loan to an ailing steel company.

An individual citizen who tries to influence the law-making process is a sort of lobbyist. The most common way to express opinions is to write your local representative or

senator. You can also send a telegram or call the legislators when they are home on weekends. When the General Assembly is in session, both the Democratic and Republican parties have a toll-free telephone service. You can call, give the name of your local legislator (make sure that you have the right political party) and leave a message telling them how you want them to vote on a bill. Whether you call, write, or meet them in person, you should try to refer to the bill by its number and topic. If you write, explain why you oppose or support the bill and ask that the legislator either vote for or against it. Don't threaten or promise and always thank the legislator for his or her time and attention. Legislators almost always answer letters and will tell you if they agree with you or give reasons why they don't. Sometimes (especially if they haven't made up their mind yet) they'll just thank you for your opinion. Don't ever think that letters or other communications with legislators don't make any difference. Legislators are eager to know what voters in their districts think about issues.

How can you find out about bills in the General Assembly and what their House and Senate numbers are? Notice that the following section of the Fort Wayne Journal Gazette for Sunday, February 18, 1979 gives Senate bills, their numbers, and their progress through the Senate. There is a similar chart for the House. These charts appear in major Indiana newspapers during a legislative session. Organizations like the Indiana State Teachers Association, Indiana Chamber of

Status of major bills at 1979 General Assembly

SENATE	Assigned to Senate committee	Defeated in Senate committee	Passed in Senate committee	Defeated on Senate floor	Passed on Senate floor	Assigned to House committee	Defeated in House committee	Passed in House committee	Signed into law by governor	Vetoed by governor	Veto sustained	Veto overridden and becomes law
1.) S.B. 27 — Repeal mandatory vehicle inspection program.	★		★		★	★						
2.) S.B. 216 — Repeal direct primary for selection of candidates for governor and lieutenant governor.						★						
3.) S.B. 67 — Prohibit suspended prison terms for persons convicted of dealing in hard drugs.						★						
4.) S.J.R. 7 — Allow lotteries in Indiana.												
5.) S.J.R. 23 — Declare Indiana's ratification of the Equal Rights Amendment to be null and void after March 22 if 38 state legislatures have not ratified.					★	★						
6.) S.B. 480 — Require health insurance companies in Indiana to offer comprehensive policies to anyone who requests them.		★										
7.) S.B. 100 — Prohibit regional governments in Indiana.												
8.) S.J.R. 8 — Call on Congress to form a constitutional convention to consider an amendment requiring a balanced federal budget.	★		★									
9.) S.B. 250 — Allow pharmacists to dispense generic drugs.	★											
10.) S.B. 218 — Require service stations to post same prices on their signs and pumps.	★		★		★	★						

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Commerce, and the Indiana Farm Bureau also keep track of bills of particular interest to their members.

Can you answer the following questions about the chart?

1. What happened to S.B. 480 concerning health insurance policy?

2. How many bills were being studied at that time by a House committee?

3. "S.J.R." stands for Senate Joint Resolution, which must be considered by both houses but does not require the governor's signature. How many joint resolutions are on the chart?

4. Find out if S.B. 27 (repeal mandatory vehicle inspection program) ever made it into a law.

5. Did S.J.R. 23 ever pass both houses? What is the current status of Indiana's ratification of the Equal Rights Amendment?

Later in this book, you'll read about other groups that have tried to influence Indiana's laws. These range from temperance groups and church organizations to the Ku Klux Klan. No matter what the group, as long as they follow Indiana's laws they have the right to try to influence the lawmaking process. In democracies such as the United States and Indiana, there will always be individuals and groups cooperating and competing to influence our legislators. Informed and effective citizens try to find out which lobbies support legislation they believe is best for the state. The way to remain informed is to read the newspapers, listen to the news and, when possible, attend meetings where issues you're interested in are discussed.

Reviewing How Laws Are Made

How well do you remember the lawmaking process? Arrange these steps in order. Not all the steps are listed, but if you can arrange them in order, you have a good idea how laws are made in Indiana.

___ a. Governor signs bill into law.

___ b. Bill goes to the other house.

___ c. Bill is introduced and assigned a number in the house of origin.

___ d. Committee action in house of origin reports "do pass" recommendation.

___ e. Having passed both houses, the bill goes to a conference committee to work out any differences.

___ f. Bill is ready for Third Reading in house of origin.

___ g. Committee in house of origin holds hearings.

Unit II
Chapter 3
Section 3 - The Executive Branch

- What Constitutional powers does the Governor have?
- What are some additional powers which the Legislature granted the Governor?
- What have been the historical strengths of the office of Governor?
- What have been the weaknesses? What are some remedies for those weaknesses?

Indiana's Governor has broad powers which were granted in the 1851 Constitution and increased in recent times. Among the most basic constitutional powers are the following:

1. "takes care that the laws be faithfully executed."
2. Serves as commander-in-chief of the state's military and naval forces.
3. Recommends legislation to the General Assembly.
4. Calls special sessions of the General Assembly.
5. Vetos legislative acts.
6. Grants reprieves and pardons.
7. Makes appointments to fill vacancies in any state administrative office, among judges or clerks of the courts, and among prosecuting attorneys.

As you continue the historical study of Indiana's government from 1851 to the present, you'll see that certain governors used every bit of their constitutional powers to make their office more effective. These so-called "strong" governors usually call for greater efficiency in state

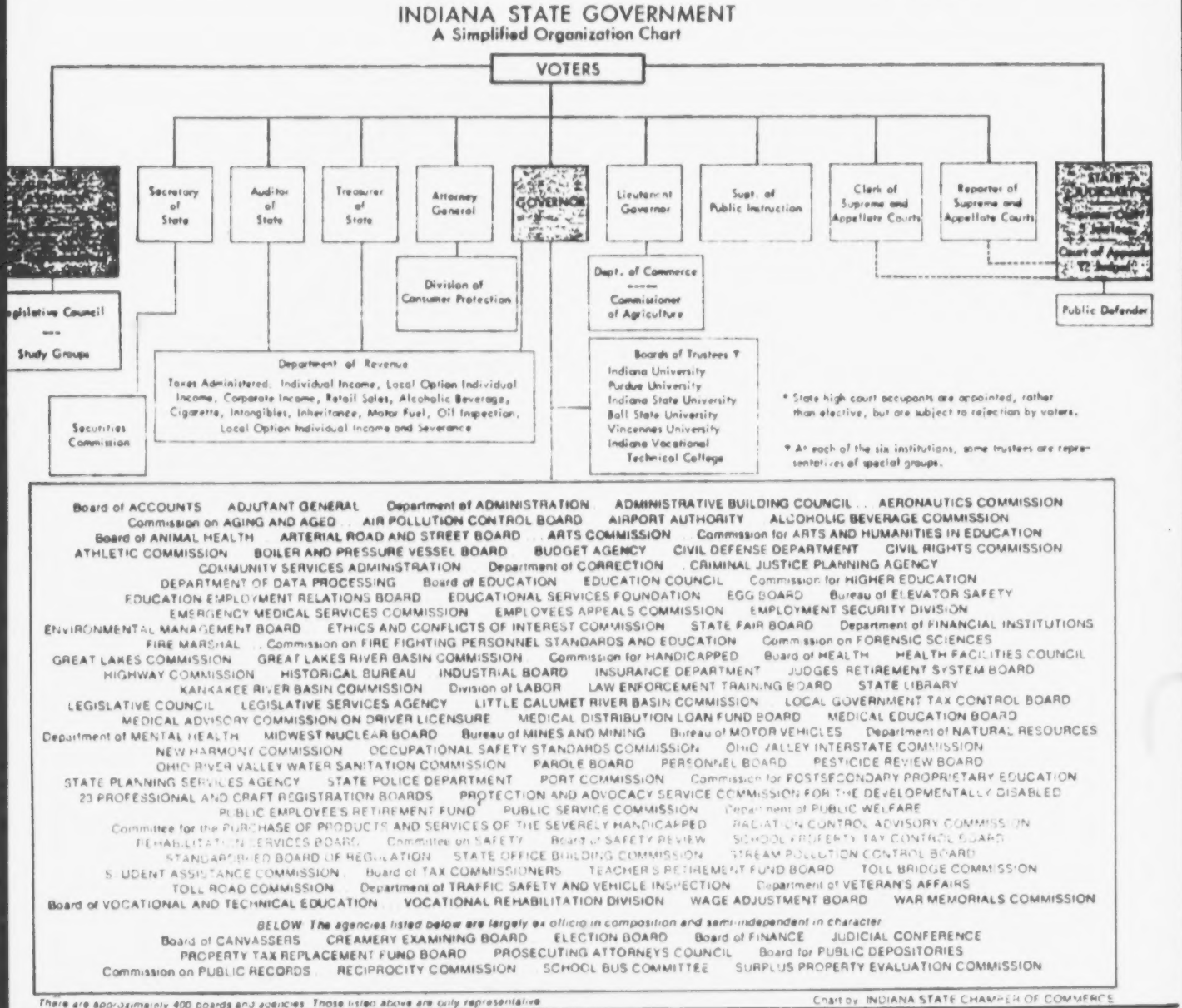
government. Because of their strong personalities and ambitious programs, they frequently stir up criticism from opposition parties, newspapers, and even rival politicians in their own party. On the other hand, you'll read about governors who may be called "weak" by some observers. That may only mean that they believed in the Jeffersonian principle, "that government which governs least, governs best." Try not to think that strong means good or that weak means bad. Instead, look for the governor's constitutional powers and the additional powers granted by the Legislature, and then determine whether or not his use of those powers met the needs of the times. Also notice the time period. Was Indiana in an economic or political crisis that required strong action?

Powers Given to Governor by the Legislature

Since 1851 the General Assembly has passed legislation to increase the power of the governor. A lot was passed when the governor and the General Assembly were controlled by the same party. At other times, there have been serious struggles for power between a General Assembly dominated by one party and a governor from the oppositon party.

One of the most important powers of the governor is that of appointment to a state administrative position. The governor has the power to appoint and remove heads of nearly all departments, commissions, and governing bodies of institutions. Over 200 of these agencies report directly to the

governor's office. You can see just how much appointive power a modern governor has by examining the following chart:


INDIANA STATE GOVERNMENT
A Simplified Organization Chart
VOTERS
Secretary of State
Auditor of State
Treasurer of State
Attorney General
GOVERNOR
Lieutenant Governor
Supt. of Public Instruction
Clerk of Supreme and Appellate Courts
Reporter of Supreme and Appellate Courts
Public Defender
Division of Consumer Protection
Dept. of Commerce
Commissioner of Agriculture
Study Groups
Department of Revenue
Taxes Administered: Individual Income, Local Option Individual Income, Corporate Income, Retail Sales, Alcoholic Beverage, Cigarette, Intangibles, Inheritance, Motor Fuel, Oil Inspection, Local Option Individual Income and Severance
Securities Commission
Boards of Trustees †
Indiana University
Purdue University
Indiana State University
Ball State University
Vincennes University
Indiana Vocational Technical College
* State high court occupants are appointed, rather than elective, but are subject to rejection by voters.
† At each of the six institutions, some trustees are representatives of special groups.
Board of ACCOUNTS ADJUTANT GENERAL Department of ADMINISTRATION ADMINISTRATIVE BUILDING COUNCIL AERONAUTICS COMMISSION
Commission on AGING AND AGED AIR POLLUTION CONTROL BOARD AIRPORT AUTHORITY ALCOHOLIC BEVERAGE COMMISSION
Board of ANIMAL HEALTH ARTERIAL ROAD AND STREET BOARD ARTS COMMISSION Commission for ARTS AND HUMANITIES IN EDUCATION
ATHLETIC COMMISSION BOILER AND PRESSURE VESSEL BOARD BUDGET AGENCY CIVIL DEFENSE DEPARTMENT CIVIL RIGHTS COMMISSION
COMMUNITY SERVICES ADMINISTRATION Department of CORRECTION CRIMINAL JUSTICE PLANNING AGENCY
DEPARTMENT OF DATA PROCESSING Board of EDUCATION EDUCATION COUNCIL Commission for HIGHER EDUCATION
EDUCATION EMPLOYMENT RELATIONS BOARD EDUCATIONAL SERVICES FOUNDATION EGG BOARD Bureau of ELEVATOR SAFETY
EMERGENCY MEDICAL SERVICES COMMISSION EMPLOYEES APPEALS COMMISSION EMPLOYMENT SECURITY DIVISION
ENVIRONMENTAL MANAGEMENT BOARD ETHICS AND CONFLICTS OF INTEREST COMMISSION STATE FAIR BOARD Department of FINANCIAL INSTITUTIONS
FIRE MARSHAL Commission on FIRE FIGHTING PERSONNEL STANDARDS AND EDUCATION Commission on FORENSIC SCIENCES
GREAT LAKES COMMISSION GREAT LAKES RIVER BASIN COMMISSION Commission for HANDICAPPED Board of HEALTH HEALTH FACILITIES COUNCIL
HIGHWAY COMMISSION HISTORICAL BUREAU INDUSTRIAL BOARD INSURANCE DEPARTMENT JUDGES' RETIREMENT SYSTEM BOARD
KANKAKEE RIVER BASIN COMMISSION Division of LABOR LAW ENFORCEMENT TRAINING BOARD STATE LIBRARY
LEGISLATIVE COUNCIL LEGISLATIVE SERVICES AGENCY LITTLE CALUMET RIVER BASIN COMMISSION LOCAL GOVERNMENT TAX CONTROL BOARD
MEDICAL ADVISORY COMMISSION ON DRIVER LICENSURE MEDICAL DISTRIBUTION LOAN FUND BOARD MEDICAL EDUCATION BOARD
Department of MENTAL HEALTH MIDWEST NUCLEAR BOARD Bureau of MINES AND MINING Bureau of MOTOR VEHICLES Department of NATURAL RESOURCES
NEW HARMONY COMMISSION OCCUPATIONAL SAFETY STANDARDS COMMISSION OHIO VALLEY INTERSTATE COMMISSION
OHIO RIVER VALLEY WATER SANITATION COMMISSION PAROLE BOARD PERSONNEL BOARD PESTICIDE REVIEW BOARD
STATE PLANNING SERVICES AGENCY STATE POLICE DEPARTMENT PORT COMMISSION Commission for POSTSECONDARY PROPRIETARY EDUCATION
23 PROFESSIONAL AND CRAFT REGISTRATION BOARDS PROTECTION AND ADVOCACY SERVICE COMMISSION FOR THE DEVELOPMENTALLY DISABLED
PUBLIC EMPLOYEES RETIREMENT FUND PUBLIC SERVICE COMMISSION Department of PUBLIC WELFARE
Committee for the PURCHASE OF PRODUCTS AND SERVICES OF THE SEVERELY HANDICAPPED RADIATION CONTROL ADVISORY COMMISSION
REHABILITATION SERVICES BOARD Committee on SAFETY Board of SAFETY REVIEW SCHOOL PROPERTY TAX CONTROL BOARD
STANDARDBRED BOARD OF REGULATION STATE OFFICE BUILDING COMMISSION STREAM POLLUTION CONTROL BOARD
STUDENT ASSISTANCE COMMISSION Board of TAX COMMISSIONERS TEACHERS RETIREMENT FUND BOARD TOLL BRIDGE COMMISSION
TOLL ROAD COMMISSION Department of TRAFFIC SAFETY AND VEHICLE INSPECTION Department of VETERAN'S AFFAIRS
Board of VOCATIONAL AND TECHNICAL EDUCATION VOCATIONAL REHABILITATION DIVISION WAGE ADJUSTMENT BOARD WAR MEMORIALS COMMISSION
BELOW The agencies listed below are largely ex officio in composition and semi-independent in character
Board of CANVASSERS CREAMERY EXAMINING BOARD ELECTION BOARD Board of FINANCE JUDICIAL CONFERENCE
PROPERTY TAX REPLACEMENT FUND BOARD PROSECUTING ATTORNEYS COUNCIL Board for PUBLIC DEPOSITORIES
Commission on PUBLIC RECORDS RECIPROCITY COMMISSION SCHOOL BUS COMMITTEE SURPLUS PROPERTY EVALUATION COMMISSION
There are approximately 400 boards and agencies. Those listed above are only representative
Chart by INDIANA STATE CHAMBER OF COMMERCE

Taken from Here Is Your Indiana Government, Indiana Chamber of Commerce, Indianapolis, Indiana, 1979-80, page 50.

- Identify some agencies which may deal with problems in your community.

- Are there any persons from your community who serve on these boards, departments, commissions? Ask them to visit your classroom and indicate what their board does and how persons are appointed.

The governor also has the power to appoint many lesser officials and state workers. This involves thousands of people--as many as 12,000 according to some sources and as few as 7,800 according to others. In the past, most persons appointed to these lesser jobs were from the same party as the governor. This system of rewarding faithful party workers with a government job is known as patronage. In earlier times it was known by the Jacksonian Democratic term--"the spoils system." Whatever political party won the election got the prizes or spoils of government jobs. In return for a state job, the worker had to make a regular payment to the governor's political party. Not all state workers are patronage appointees, but Indiana ranks second to Pennsylvania in the number of persons who owe their jobs to membership in the governor's party.

There are two sides to the patronage question. List the arguments for a governor having the right to appoint and remove party workers to help him carry out his program. Now, list arguments against having state jobs filled by persons whose major qualification is membership in the same party as the governor. Which list of arguments seems most convincing to you? Why?

Other powers and responsibilities of the Indiana governor include serving as chairman of numerous boards, commissions and agencies, heading their political party, and attending hundreds of public functions ranging from ground-breaking ceremonies and bridge dedications to dinners of state-wide organizations and college graduations. Many television stations carry a weekly program called "The State House Report" in which the governor or an appointee explains some aspect of state government. The governor has almost instant access to Hoosiers through the media.

Historical Strengths and Weaknesses of the Governor's Office

We have already seen the powers any governor has simply by being elected. These powers sometimes come from the parties themselves, but more often they stem from the personalities of the governors. Look for these personality traits as you continue your study of Indiana's political history. Sometimes the historical period determines whether a governor may be weak or strong. A succession of weak governors may require a strong governor to step in to solve problems. Keep these points in mind when studying particular administrations.

1. What could the Governor do in case a flood in the southern part of the state causes a breakdown of law and order and looting begins?

2. What can a governor do if there is a vacancy in the State Budget Agency?

3. How can a governor use political power to prevent a legislator in his own party from trying to organize an override of a veto?

4. How can a governor use his powers to emphasize support for energy conservation?

There are also built-in limits on the power of governors. These limits have been criticized at times, and a few have even been changed in recent years. Probably the greatest limitation was that the governor could serve only one four-year term in a row. Only Henry Schricker, governor between 1940 and 1944 and later between 1948 and 1952, served two terms. This limitation prevented governors from developing long-term programs. In 1972, Indiana voters approved a constitutional amendment to permit a governor's re-election for one additional consecutive term. Governor Otis Bowen served two terms between 1972 and 1980, becoming the first Indiana governor to serve two successive terms.

Another important limitation is that the governor cannot appoint major administrative heads such as the Secretary of State, Treasurer, Attorney General or Auditor. Thus, the governor does not have a cabinet like the U.S. President. Sometimes persons in these major administrative offices will oppose the governor's stand on major issues or programs. The governor does not have the power to discipline these officers. Some people argue that the governor ought to be able to appoint these officials, but others disagree and say it would make the governor too powerful.

In 1978 the Republican party developed a political

solution to having rival administrative officers. Indiana voters watched carefully developed television ads which emphasized "The Bowen Team," even though Governor Bowen's name wasn't on the ballot. The "Bowen Team" consisted of candidates for Secretary of State, Treasurer, Auditor, and Clerk for the Supreme Court and Court of Appeals. The majority of voters cast their ballots for "The Bowen Team." Once elected, however, the officials could still decide to oppose Bowen's programs.

Another problem with having major state officers elected independently of the governor was solved in 1974. Before that time, the lieutenant governor could be elected from one party, and the governor from the opposition. This happened in 1960-64 when Democratic Governor Matthew Welsh was elected at the same time as Republican Lieutenant Governor Richard Risine. The story of that historic mismatch will be told in a later chapter.

In conclusion, Indiana's governor has many powers and, in the hands of an energetic individual at the right time, the governor can become very powerful. There are also several limits on the governor's power. In recent times, constitutional amendments to strengthen the office have been receiving greater attention. As a citizen, you will probably be making decisions in the future on some of these amendments.

Activity

(Adapted from Indiana Government, Learning Activity Package, from Here Is Your Indiana Government, published by Indiana State Chamber of Commerce, 1979, pp. 37-39.)

Study the following list of recommendations to strengthen the office of Governor. Which ones would you support? Why? Which ones would you oppose? Why?

1. The Governor should be elected to four-year terms with no limitations as to the number of terms any individual may serve.

2. It should take a 2/3rds vote in each house to override the Governor's veto.

3. The Governor should appoint all major department heads. The department heads would be directly answerable to the Governor just as cabinet members are to the U.S. President, and he or she could ask for their resignation at any time.

4. Consider the above proposal for each administrative department separately: Secretary of State, Treasurer, Auditor, Attorney General, and Superintendent of Public Instruction.

Unit II
Chapter 3
Section 4 - Changes in the Judicial Branch Since 1851

When the 1851 Constitution first appeared, judges were elected just like legislators or the governor in the other two government branches. The idea that judges should be elected was part of the "democratic spirit" of the 1850's. However, running for election was not popular with qualified lawyers, and judges sometimes made judicial decisions in order to be re-elected. Because the 1851 Constitution was so difficult to change, it was not until 1972 that judicial reform took most judges out of party politics.

- How was the judicial system originally set up by the 1851 Constitution?
- How did the judicial branch balance the other two branches of government?
- How did the judiciary finally "provide the key" so that Indiana's Constitution could be amended?
- How was the judiciary itself changed by the 1972 Constitutional Amendments?

The Judicial Structure of the 1851 Constitution

The 1851 Constitution stated that the judicial power "shall be vested in a Supreme Court, Circuit Court, and such other courts as the General Assembly may establish." All judges, from township justices of the peace to the Supreme Court judges, ran for election as either Democrats or Republicans. Most were elected for four-year terms, but Supreme Court justices served six years.

The 1851 Constitution gave the General Assembly the power to determine the size of the Supreme Court. Four Supreme Court judges, representing four geographic districts, began their terms in January, 1853. Due to the increased number of cases (caseload), a fifth justice was added in 1872. This helped, but by 1881 the General Assembly added five "commissioners" to assist the judges. This was unsatisfactory because people wanted their cases decided by judges, not commissioners. Finally, in 1891, the General Assembly created an Appellate Court consisting of five judges elected from five geographic districts. As you can see in the chart, the Appellate Court was just below the Supreme Court. Since 1891, the Appellate Court has grown to include eight judges elected for four-year terms.

The Constitution also gave the power to the General Assembly to determine what cases the Supreme Court and the Appellate Court could hear. This is known as jurisdiction. The General Assembly could determine what types of cases could go immediately to the Supreme Court without going through any lower courts. This is known as original jurisdiction. It could also determine which types of cases went to the Supreme Court after first going through some lower court. These cases could be appealed to the Supreme Court. This is where the term appellate comes from. For years the question of jurisdiction was determined by the General Assembly, but that changed in 1972. Certain cases, such as when the death penalty is given to a criminal, are automatically

appealed to the Supreme Court.

The Appellate System

How does the appeals system work? After a crime, an accused person faces trial in a local court known as the court of original jurisdiction. This is where the evidence and arguments for the prosecution and defense are presented. Judges or juries determine guilt or innocence and assign a punishment if the person is found guilty. After the trial, those who have been tried may either accept the decision or appeal to a higher court. The Court of Appeals listens to the appeal by hearing more arguments and reviewing the written record (transcript) of the local trial. The appellate courts may uphold the local court's decision or they may agree with the side that appealed. In that case, the decision is completely reversed. If either side wishes, the case could be appealed to the Supreme Court. The Supreme Court may refuse to hear the case. That means that they uphold the lower court's decision. If they do decide to hear the case, they can uphold or reverse the appellate court's decision. Sometimes they order a new trial because of errors in the lower court's trial procedures.

What cases can go to the Supreme Court? It is the highest court in the state, and its main responsibility is to interpret the meaning of the Indiana Constitution. This means that the Supreme Court has the final power of judicial review concerning constitutional issues. In addition, when

serious criminal penalties such as death or any imprisonment over 10 years are involved, the Supreme Court must review the case.

The Judicial Branch as a Balance to the Other Two Branches of Government

In the 1851 Constitution, the idea of separation of government powers is discussed in Article 3. However, it is difficult to see how the judicial branch can "balance" the powers of the governor or the General Assembly. The power of the judicial branch arises only at certain times in Indiana's history, in a few important Supreme Court decisions. Later in the book we will examine three cases in which the Supreme Court's decision has kept one branch or another from taking too much power.

Judicial Simplification of the Constitutional Amendment Process

Both the 1816 and the 1851 Constitutions have been very difficult to amend. Earlier in Chapter 1 of this Unit we saw how long it took to replace the 1816 Constitution. The writers of the 1851 Constitution made some provision for easier repair of their document, but this remained a problem for Indiana lawmakers and voters.

Let's examine Article 16 of the 1851 Constitution to see what the process is for changing our Constitution. Every amendment must go through the following steps:

1. An amendment can be proposed in either house of the General Assembly.

2. A constitutional majority in both houses must pass the amendment.

3. After the next election in which a General Assembly is elected, that General Assembly must pass the amendment. Again, constitutional majorities are necessary in both houses.

4. The constitutional amendment is put before the voters, and "A majority of said electors shall ratify the same."

5. The governor proclaims that the amendment has passed.

Although this process seems simple enough, it did not work well in the past. The problem centered around determining when a majority of the electors (voters) had approved a proposed amendment. Until recent times, the Supreme Court ruled that a majority of the voters voting for the proposed amendment was not enough. The amendment could only pass with a majority of all persons who had voted in that election for any official. This is known as absolute majority. Study this example:

Governor Smith is running against Challenger Brown. Amendment X is also on the ballot. Here are the results following election day:

For Governor Smith	500,000	For Amendment X	400,000
For Challenger Brown	450,000	Against Amendment X	70,000

It would appear that Governor Smith narrowly beat Challenger Brown and that Amendment X passed easily. This was not the case according to the Supreme Court. If you look at the total number of votes cast for both candidates, you find

950,000 votes. But only 470,000 total votes were cast for and against the amendment. That is 5,001 votes short of the 475,001 necessary, which would be one vote more than a majority in the gubernatorial race. Perhaps many voters did not see the amendment question on the ballot because it was not attached to any political party. It is also possible that voters may not have understood or cared about the proposed change to the Constitution. Even though 330,000 more voters wanted the amendment than opposed it, it was defeated. This happened to dozens of proposed amendments to our Constitution, and made the 1851 Constitution almost unamendable.

Since 1851 several hundred proposals for changing our Constitution have been made. Most of these have died in one or the other chamber of the General Assembly. Only 56 ever survived two successive General Assemblies to be submitted to the voters. Of those 56, only 34 passed the voters' approval. Even those numbers can be somewhat deceiving. It might appear that the Indiana Constitution must not be that difficult to change if 34 amendments have been made.

If you examine Indiana's history closely, you will see that the Supreme Court played a crucial role in the great majority of Indiana's constitutional changes. The first amendment to the 1851 Constitution concerned the denial of liability for state stock certificates. In 1873 the voters overwhelmingly approved the change by a vote of 158,400 to 1,030. There was no doubt that Indiana voters wanted to change their Constitution. After the first amendment, how-

ever, things became more difficult.

In 1880 seven major changes were put before the voters in a general election. While all were approved by a majority of voters voting for the amendments, none of the amendments won by an absolute majority. That was a frustrating predicament, since the Indiana Constitution obviously needed those seven changes. The majority of voters who cared to vote on them wanted the amendments passed, but the decision was really made by those who did not vote on them at all.

At that point the Supreme Court tried to make Indiana's amendment process somewhat easier. In the case known as The State vs. Swift (1880), the majority of the Court ruled that the seven amendments were neither ratified nor rejected. Because of the problem in interpreting what kind of majority was necessary to approve amendments, the Supreme Court advised the Legislature and Indiana citizens to try to pass the amendments again. In March, 1881 a special election was held, and the only items on the ballot were the seven proposed amendments. This time there could be no comparison between the amendments and other issues or candidates.

Although special elections effectively solved the problem caused by the absolute majority rule, they also caused other problems. Special elections for constitutional amendments were very expensive, and most voters were not as interested in non-partisan elections. Between 1881 and 1921, hundreds of proposals for constitutional changes passed one or the other house, and dozens of these finally made it to elec-

tions. All of them went down to defeat over that forty-year period. Although governors, legislators, political parties, and interested citizens were very concerned about problems in Indiana's government, the new amendment process did not seem able to help very much.

Since the special election method of changing the Constitution was not effective, and since there was not provision for a convention to rewrite the Constitution, it seemed that Indiana was stuck with a badly outmoded document. Again, the Supreme Court came to the rescue. The Todd Case of 1935 resulted in a crucial decision affecting Indiana's amendment process. Let's examine this case in more depth.

Article 7, Section 21 of Indiana's 1851 Constitution stated that "Every person of good moral character, being a voter, shall be entitled to admission to practice law in all courts of justice." In other words, any person wishing to be an Indiana lawyer could be one, as long as he was of good character. He didn't have to go to law school, pass a bar examination, or be formally admitted to practice in any court. The Jacksonian Democratic delegates to the 1851 Constitutional Convention saw no reason why all men who were capable of voting shouldn't also be lawyers.

By 1897 the General Assembly began to try to remove this flaw in the Constitution. Some persons without proper legal training were practicing law. A "lawyer's qualification" amendment first appeared on the ballot in 1900. It received 240,000 votes in favor and 144,000 votes opposing qualifica-

tions. Since the amendment did not pass then by an absolute majority, the General Assembly tried to have it passed again in 1906, 1910, 1921, and 1932. Finally, in 1931 the General Assembly enacted a law granting the Supreme Court exclusive powers to admit attorneys to practice law in all courts of the state. The Court immediately set up regulations for legal training and an examination to determine professional fitness.

In January of 1935, Lemuel S. Todd brought his complaint before the Supreme Court. His attorney argued that the Supreme Court had no power to require Todd to take a bar examination. He stated that Article 7, Section 21 still protected Todd's right to practice law in Indiana and that it had not been removed in the election of 1932, because an absolute majority had not approved the removal of the section from the Constitution.

The decision of the Supreme Court in the Todd Case was that, "If a proposed amendment is submitted to the voters and if more votes are in favor of than in opposition to the amendment, the amendment is ratified even though the total vote cast in favor of the amendment is less than a majority of the number of votes cast at the election at which the amendment is voted on." In plain words, any amendment could be passed as long as a simple majority voting on that amendment approved it. The Supreme Court believed that there were enough safeguards on hasty amendments already, and that changes could be made in government even if those who did not

wish to express themselves ignored a vote on constitutional amendments. As was said in the Todd Case, "Progress in popular government should not be at the mercy of those who have no interest in the problems of government."

The Todd Case is a clear example of the Supreme Court's use of the power of judicial review. This means that the Court has the duty to interpret the Constitution and explain what the writers of it meant. This power of interpretation belongs only to the highest court in the state. It is this power of judicial review which protects the independence of the Supreme Court and the judiciary in general from the other two branches of government.

The immediate result of the Todd Case was first, of course, the adoption of the "lawyer's qualifications" amendment eliminating Article 7, Section 21. In the years following the Todd Case (1932-1980), there have been 25 amendments to the Indiana Constitution. Compare that to only nine from 1851 to 1932. These most recent amendments have modernized our Constitution and discouraged the movement for a new Constitutional Convention. The more notable amendments since 1932 have permitted the governor to serve two successive terms, allowed the General Assembly to meet in annual sessions, required the governor and lieutenant governor to run as a team, and have further simplified constitutional revision.

Changes in the Judicial System Through the 1972 Constitutional Amendments

The judiciary branch has itself benefited from the Todd decision, which made constitutional revision easier. The most important change was the provision for non-partisan selection of all judges. In 1967 the General Assembly limited non-partisan selection to judges on the Supreme Court and Appellate Court. In 1970 the voters approved the new Article 7, which went into effect in 1972.

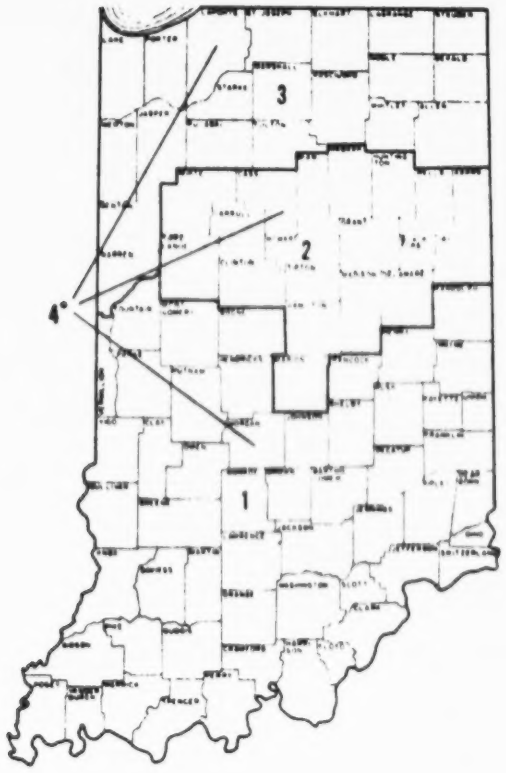
The non-partisan selection of judges begins with a Judicial Nominating Commission. There are seven persons on this committee: three lawyers elected by the lawyers of Indiana, three citizens appointed by the governor, and the Chief Justice or someone appointed by him to take his place. This Judicial Nominating Commission recommends three persons whenever there is a vacancy on the Supreme Court or the Court of Appeals. The governor has 60 days in which to appoint one of the nominees to the judgeship. If the governor fails to do so, the Chief Justice or his appointee may make the appointment.

Once judges are appointed, they serve two years before running in a special "judge retention" election. Voters have the choice of approving them to serve another ten years or rejecting them. If they are rejected, the Judicial Nominating Commission makes recommendations for a new replacement. Every ten years, the judges run again. They must retire, however, by age 75.

This system of selection ensures that highly qualified persons may be appointed to judgeships and serve long terms. However, the voters still have something to say about a judge who they feel does not deserve another term. In those rare cases where a judge needs to be disciplined or even removed before the ten-year term has expired, the Judicial Nominating Commission also serves as the Commission on Judicial Qualifications. It may recommend to the Supreme Court the suspension, censure, or retirement of a judge who is found guilty in any U.S. court. Other reasons for disciplinary action include being found guilty of a felony or a crime of moral turpitude (serious moral breakdown), serious physical breakdown, habitual intemperance, willful and persistent failure to perform judiciary duties.

Another major revision of the old judicial article involves setting up the Court of Appeals. As you can see from the map, there are four judicial districts, and each have three judges. Three of the districts have specific geographic boundaries and the fourth covers the entire state. This fourth court may hear cases in any part of the state. Almost all the cases that come to the Court of Appeals are under appellate jurisdiction.

Indiana Court Of Appeals Districts



*Jurisdiction of the new Fourth District encompasses the entire state.

Summary

Indiana's judiciary has gone through major changes between 1851 and 1972. Judges have been taken out of politics. The jurisdictions of the highest courts have been put into the Constitution and not just left for the General Assembly to decide. The Supreme Court has played a crucial role through its power of judicial review in changing Indian Indiana's Constitution.

DEBRULER HUNTER GIVAN, C. J. PIVARNIK PRENTICE

The five Justices sit at this bench in the Supreme Court chamber in the State Capitol at Indianapolis to hear opposing arguments in appeal cases which come before them. Their eventual decisions become public record when they are formally filed with the Clerk of the Court.